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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 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.


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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. **Case Holder:** 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

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.

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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.
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 WCMCMH 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 WCMCMH 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 Clerical Clinical Support Representative prior to release.**

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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 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 Chief Clinical Officer 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


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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 Disability Rights of Michigan 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 Disability Rights of Michigan 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, Disability Rights of Michigan 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.


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- 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.
    - 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.
    - 2.1.12 A record is kept of disclosures including a) Information released, b) To whom it is released, c) Purpose stated by person requesting the information, d) Statement indicating how disclosed information is germane to the state purpose, e) The part of law under which disclosure

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is made, f) Statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released.


- 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 Clerical Clinical Support Representative 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 Clerical Clinical Support Representative 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 Clerical Clinical Support Representative 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 case holder 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 case holder.
- 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 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 case holder 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

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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 LARA Administrative Rules for Substance Use 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 Chief Clinical Officer 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 case holder 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 case holder shall pull the information, which is not considered detrimental from the clinical record, and submit it to the Clerical Clinical Support Representative and/or designee. The responsible case holder 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)].
- 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 Clerical Clinical Support Representative 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 case holder.
- 2.11. Prior to the Clerical Clinical Support Representative 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




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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 Clerical Clinical Support Representative 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 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.

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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;
  - 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 Chief Clinical Officer 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;
  - 5.6 The specific information released; and
  - 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 case holder 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
    - 6.1.6 A statement that the consent is revocable at any time unless action has already been taken in reliance upon it and
    - 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 case holder for review.
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 Chief Clinical Officer.

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7.2 Within 24 hours the Chief Clinical Officer shall consult with the responsible case holder and coordinator/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 Chief Clinical Officer 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 case holder 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 review the record without the responsible case holder 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.

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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 Clerical Clinical Support Representative 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 case holder who is/was seeing the recipient.
  - 8.3 After the above information is logged, the appropriate responsible case holder will be notified of the request for accounting of disclosure.
  - 8.4 The Clerical Clinical Support Representative 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 Clerical Clinical Support Representative 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. Clerical Clinical Support Representative and IS are the only departments with access to the log.
  - 8.6 After completing the above, the Clerical Clinical Support Representative 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

	<b>Release of Information</b>			
	<b>Chapter:</b>	Recipient Rights	<b>Policy #</b>	5-2-1.2
	<b>Section:</b>	Recipient Rights in all CMH Settings	<b>Revision #</b>	2

contain 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 Chief Clinical Officer, the Customer Engagement 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.
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

	<b>Release of Information</b>			
	<b>Chapter:</b>	Recipient Rights	<b>Policy #</b>	5-2-1.2
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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

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 minor's 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 Chief Clinical Officer 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: MDHHS Consent to Share Behavioral Health Information for Care Coordination Purposes (MDHHS Form 5515)

	<b>Release of Information</b>			
	<b>Chapter:</b>	Recipient Rights	<b>Policy #</b>	5-2-1.2
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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)

VIII. **POLICY/PROCEDURE REVIEW:**

REV#	APPROVED BY	Policy/Procedure	DATE
NC	Unknown		03/2006
NC	Unknown		09/2006
NC	Unknown		08/2009
NC	Unknown		09/2011
NC	Unknown		07/2012
NC	Unknown		01/2013
NC	Unknown		08/2013
NC	Unknown		10/2015
NC	Unknown		11/2016
NC	Unknown		08/2017
NC	Unknown		11/2017
NC	Unknown		05/2018
NC	Unknown		09/2018
1	COC	Procedure	11/2020
2	COC	Procedure	04/2021
<b>Board Approval Date: 02/20/1996</b>			

IX. **CHIEF EXECUTIVE OFFICER ENDORSEMENT:**

I have reviewed and approved of policy # 5-2-1.2 Revision # 2.

CEO: Lisa A. Williams

Approval Signature: \_\_\_\_\_



**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 form 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.)

First Name	Middle Initial	Last Name	Date of Birth	Individual's ID Number (Medical ID, Last 4 digits of SSN, other)
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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 abuse 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. _____	6. _____
2. _____	7. _____
3. _____	8. _____
4. _____	9. _____
5. _____	10. _____

**II. I consent to share:**

- All of my behavioral health and substance use disorder information
- 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 that 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.)

Expiration 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:	
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%; border-bottom: 1px solid black; margin-bottom: 2px;"></div> <div style="width: 45%; border-bottom: 1px solid black; margin-bottom: 2px;"></div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%; border-bottom: 1px solid black; margin-bottom: 2px;"></div> <div style="width: 45%; border-bottom: 1px solid black; margin-bottom: 2px;"></div> </div>	
OR	
<input type="checkbox"/> For all persons and agencies:	
<div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 60%; border-bottom: 1px solid black;"></div> <div style="width: 35%; border-bottom: 1px solid black;"></div> </div>	
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.	
<div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 60%; border-bottom: 1px solid black;"></div> <div style="width: 35%; border-bottom: 1px solid black;"></div> </div>	

- 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, 45 CFR 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, political beliefs or disability.	

**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

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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)

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Electronic signature is defined as:

“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.”

A Record is defined as:

“information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.”

We will bring in other definitions contained in Act in various other parts of this memorandum.

Before we go any further, we should mention that there are no reported cases dealing with Act nor, save one, are there any journal articles on the topic. Hence, we are somewhat in the position of pioneers in the interpretation and application of the Act.

Under Section 3 of the Act, there are some areas of documents or transactions that are excluded from the Act and they are:

- Wills or Trusts; and
- Parts of the Uniform Commercial Code.

The Act is applicable to any transaction occurring after October 16, 2000.

From the above definitions and references to parts of the Act, we assume the following basic understandings:

- The law applies to West Michigan Community Mental Health System;
- The law applies to your employees;
- The law applies to your clients; and
- The law does not exclude any transactions other than wills, trusts and certain uniform commercial code documents. (All of which you will not be involved in)

#### Issue I

Must the persons with whom you are dealing agree to an “Electronic Transaction?”

The answer to Issue I is yes.

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Discussion

Section 5(2) states as follows:

This Act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties conduct.

Section 5(3) states as follows:

A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

Section 5(4) states as follows:

Unless otherwise prohibited by this Act, a provision of this Act may be varied by agreement.

From the above, we conclude that employees, persons, etc. must agree to conduct transactions by electronic means. We do not conclude that there must be a writing executed by the employee, etc. wherein the employee agrees to conduct a electronic transaction. We say this because of the second sentence in Section 5(2) which says the question of assent to use electronic means may be determined by such things as the conduct of the parties, and other surrounding circumstances.

In response to your first "agenda" item - type of Statement West Michigan Community Mental Health System employees must sign regarding electronic signature - it is our opinion that they should sign a hard copy agreement which states they agree to conduct a transaction by electronic means. This document should become part of your employee records. The agreement, however, would seem to apply to only a single transaction. We say this because the statute uses the article "a" in the sentence:

Whether the parties agree to conduct a transaction. . . (emphasis added)

The use of this article seems to imply that the agreement to use electronic means applies only to a single transaction. This conclusion is reinforced by the sentence that states:

A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. (emphasis added)

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The above right to an agreement to conduct business by electronic means may not be waived by agreement.

It may be helpful if we look at an example of a transaction - the employment contract - between yourself and your employees.

The employment contract need not, however, be in writing and, hence, no electronic signature would ever come into play. However, if you have an employment relationship and it is at will you may wish to have the employee "sign off" on the same. You may wish the employee to also use an electronic signature as to other employment policies so that you are protected in the case of a suit, disagreement, etc. A good example of this is a "sign-off" on your sexual harassment policy. All employees should sign off on this policy as it may provide a defense to a suit if you can show that the policy was given to the employee and the employee acknowledged that he/she has read the policy.

Getting back to the issue of whether or not an employee's written acknowledgment that he or she agrees to use electronic means for a transactions, I would suggest that you could use one agreement for the employment relationship which would cover all of the terms and conditions of employment. The following is a suggested agreement:

WEST MICHIGAN COMMUNITY MENTAL HEALTH SYSTEM

Date: \_\_\_\_\_

Re: Employment Relationship Including All of the Terms and  
Conditions of Employment

The undersigned employee and West Michigan Community Mental Health Services hereby agree to use electronic means as set forth in Public Act 2000 No. 305, for the creation of and the determination of the nature of the employment relationship, including all of the terms and conditions of said relationship. This agreement applies to the following:

- Status of employment relationship;
- Employee handbook;
- Employee compensation;
- Employee fringe benefits;
- Leave policies, including FMLA;
- Workers compensation;
- ADA; and
- Such other matters, laws or regulations, either State or Federal, that pertain to the employment relationship and its terms and conditions.

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This agreement shall last for the term of employment, but may be rescinded by either party, for any or no reason, upon ten (10) business days written notice sent by ordinary mail to the office of West Michigan Community Mental Health System or the residence of the employee. The time of the notice period shall commence the day after the notice is mailed.

The parties agree that this agreement applies only to the transaction of the employment relationship as its attendant terms and conditions stated above.

WITNESSES:

WEST MICHIGAN  
COMMUNITY MENTAL  
HEALTH SYSTEM:

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
EMPLOYEE

Issue II

Does the State of Michigan Recognize Electronic Signature / Electronic Records?

We will give you a qualified yes to Issue II.

Discussions

Section 18 states as follows:

- (1) Except as otherwise provided in Section 12(6), the department of management and budget shall determine whether, and to the extent to which, each state department will send and accept electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.
- (2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1), the department of management and budget, giving due

consideration to security, may specify any or all of the following:

- (a) The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes.
  - (b) If an electronic record is required to be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature is to be affixed to the electronic record, and the identity of or criteria that is to be met by any third party used by a person filing a document.
  - (c) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and audit ability of electronic records.
  - (d) Any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.
- (3) Except as otherwise provided in section 12(6), this act does not require a governmental agency or official of this state to use or permit the use of electronic records or electronic signatures.

As can be seen, the Department of Management and Budget makes the determination as to whether or not a state department may accept and send electronic records and electronic signatures. Subsection 3 should be noted the act does not require you to use electronic signatures or words, except as may be required under Section 12(6).

In an attempt to further answer this Issue 2, I contacted Mr. Peter Trequise, the Chief Operating Officer for the Michigan Department of Community Health. He informed me of the following:

- As of this date, the department is not using electronic signatures;
- The department is considering the use of electronic signatures for:

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1. Applications for Medicare, and
2. The hearing process for recipients.

Both of the above require signatures, but, again, they are not now using electronic signatures;

- They are currently accepting electronic billings;
- They are currently using electronic remittances (a notice stating how much they are going to pay for what item and when payment will be made); and
- Notifications of changes in Medicaid and other information.

They are in the process of, or currently are providing for electronic transfer of funds for Medicaid accounts (funds that go directly into CMH accounts). They are also working on uniform billing codes known as Electronic Data Interchange, but this apparently has been delayed until October 1, 2002.

The above is, to my knowledge, a summary of the use by the State of the Uniform Electronics Transfer Act for community mental health purpose.

### Issue III

How are electronic records presented in a court of law?

### Discussion

The act states the following:

Section 7(1). A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.

Section 7(4). If a law requires a signature, an electronic signature satisfies the law.

Section 7(2). A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.

Section 7(3). If a law requires a record to be in writing, an electronic record satisfies the law.

Section 13 of the act states as follows:



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In a criminal or civil proceeding, evidence of a record or signature shall not be excluded solely because it is in electronic form.

From the above we may conclude the following:

- Electronic signatures are valid;
- Electronic contracts are valid;
- Electronic records are valid; and
- All electronic records and signatures may be presented in a court of law.

To answer Issue III more specifically, I would suggest the following:

- A lap top computer would be used and brought to court;
- Software and equipment would be used whereby the electronic record and signature would be projected on a screen for visual use by the court;
- All of the software would be duplicated so that the same may be marked as an exhibit;
- The exhibit would be kept as part of the court record;
- The exhibit would be identified by your keeper of the records as to (a) what the record is and (b) the record's authenticity; and
- The software would have the capability of down loading the electronic record and signature which may also be used as a marked exhibit, said exhibit indicating that it is a hard copy of the electronic record and signature.

Please keep in mind that the above is how I would do it. The act does not contain any guidance as to how electronic records or signatures are offered into evidence. I have seen presenters at conferences use lap top computers and related software and equipment to display on a large screen electronically stored records. The visual display is usually very effective as the same is again large and easily read.

All evidence is usually first marked as an exhibit and then is offered into evidence through a witness. Again, I would have the software marked as an exhibit. Then, as stated above, I would show the same to the keeper of your records to identify and authenticate and then the same is offered into evidence.

#### Issue IV

Is the Electronic Signature acceptable for clinician, physician and client?

We will give a qualified yes to Issue IV

#### Discussion

On page 1, we noted that "a person" means an "individual" and a "governmental entity." Since clinicians, physicians and clients are all individuals, they are thereby included in the act in reference to a "person." Further, you are a governmental entity and thereby a "person" under the act.

In review of the definition of a transaction, it is for "business" or "governmental affairs." The Act doesn't define "business" or "governmental affairs." When a term is not defined by Act the normal rule of statutory construction is to look to dictionary definitions for the commonly accepted meaning of a term. In Merriam-Webster Dictionary, "business" is defined as:

1. Occupation. Also task, mission;
2. A commercial or industrial enterprise; also trade;
3. Affair, matters; or
4. Personal concern.

From the above, I could readily conclude that your clinicians, physicians and clients could use the Act as they are persons covered under the Act and they are involved in "tasks," "missions," "affairs," "matters," and "personal concerns."

Note, in the above paragraph, I left out the part of the definition both in Act, and in the dictionary that refers to "commercial or industrial enterprise." Some may contend that commerce and industry is what the Act was intended for, but the Act does refer to "business." Some of your activity with your clients may involve commerce, e.g., payment for services, which I conclude can readily be performed under the Act. But again, I assume that the work of your clinicians and physicians would not be commercial. Again, however, since the legislature didn't define business and if you follow a rule of statutory construction, I conclude from my remarks above the term "business" could apply to "tasks," "missions," "personal affairs," etc. Hence, I believe an electronic signature would be acceptable for use by clinician, physician and client.

#### Issue V

Is Electronic Signature acceptable on all types of documents?

#### Discussion

As previously noted, electronic records and signatures apply to all transactions except wills, trusts and certain documents under the commercial code. Referring back to the definition of a transaction, it applies to an "action" or "set of actions" between 2 or more persons relating to business or governmental affairs. Again, the Act does not define the term "action." Hence, we again look to the dictionary for definitions of the term which in Merriam-Webster Dictionary are as follows:

1. A legal proceeding;

2. The manner or method of performing; and
3. The accomplishment of a thing over a period of time, in stages or with the possibility of repetition.

From the above, one may conclude that the Act would apply to any manner or method of performance or the accomplishment of a thing over a period of time. A "thing" is defined in Merriam-Webster Dictionary as a "matter of concern" or as a "deed or an act." Hence, one may again conclude that the Act would apply to any matter that is of a personal concern or as actions, or would involve a manner or method of performing.

From the above we would conclude that the Act would apply to most all, if not all, matters that pertain to your agency, to your clinicians, physicians, employees and clients.

#### Issue VI

Does the document have to be printed on hard copy?

#### Discussion

I do not find this requirement being specifically required by the Act. However, I would, and this is my personal preference, provide most, if not all circumstances that the document could be produced on a hard copy. I say this because the same may be necessary for court room use as well as other uses not anticipated at the time the record or signature is made by electronic means. Further, Section 8 of the Act deals with information required in writing and is as follows:

- (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record. (Note, the receipt must be able to print the record. If the recipient can print the record, you must also be able to do so.)
- (2) If a law requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, all of the following rules apply:
  - (a) The record must be posted or displayed in the manner specified by law.

- (b) Except as otherwise provided in subsection 4(b), the record shall be sent, communicated, or transmitted by the method specified by law.
- (c) The record shall contain the information formatted in the manner specified by law.

(Note, you may need to post a document and you would thereby need a hard copy.)

- (3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.
- (4) The requirements of this section may be varied by either of the following:
  - (a) To the same extent a law other than this act that requires information to be provided, sent, or delivered in writing allows that requirement to be varied by agreement.
  - (b) To the same extent a law other than this Act that requires a record to be sent, communicated, or transmitted by regular United States mail allows that requirement to be varied by agreement.

From the above, if for some reason the person is not able to receive the record because you as the sender inhibited the recipient to receive the same, you may then have to use and rely on a hard copy. Hence, I would always provide that a hard copy may be produced.

#### Issue VII

What are the requirements for correcting electronic records?

#### Discussion

Regarding Issue VII, the Act states:

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

- (a) If the parties have agreed to use a security procedure to detect changes or errors and 1 party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may void the effect of the changed or erroneous electronic record.
- (b) In an automated transaction involving an individual, the individual may void the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide for the prevention or correction of the error and at the time the individual learns of the error, all of the following apply:
  - (i) The individual promptly notified the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.
  - (ii) The individual takes reasonable steps to return to the other person or to destroy any consideration received as a result of the erroneous electronic record.
  - (iii) The individual has not used or received any benefit or value from any consideration received from the other person.
- (c) If neither subdivision (a) nor (b) applies, the error has the same effect as provided by law.
- (d) Subdivisions (b) and (c) cannot be varied by agreement.

Section 10 is somewhat difficult to follow, but after a few readings I believe the same deals adequately with the correction of error. However, you will need to establish a security procedure to detect changes or errors that is understandable and applicable to all concerned. We believe that the security procedure should be on a hard copy and signed by all parties. This procedure should be kept in a secure place with access only to those who would need to know the same.

Issue VIII

What is the methodology used in obtaining client signature electronically?

Discussion

The Act does not specifically cover this question. The Act, however, does define electronic signature (see page two). I am not exactly sure, however, what this definition of an electronic signature means. Hence, let's break it down as follows:

- It is a sound, symbol or process;
- It is attached to a record;
  - By a person; and
  - By the person with the intent to sign the record.

Let us now apply the above to a transaction - to the application for services. The application is transmitted to the applicant by electronic means, e.g., the Internet. The applicant fills out the application and places his or her name in the blank that calls for "the signature of the applicant."

The application where the signature line is located could state:

"By the attachment of my name to this record of application in the above signature line, it is my clear intent to sign, by electronic means, this application."

If you wish your client to sign a consent and waiver to Release Records, just below the signature line you could state:

"By the attachment of my name to the record of Consent and Waiver to Release Records in the above signature line, it is my clear intent to sign, by electronic means, this Consent and Waiver to Release Records."

Again, you must have a security procedure to detect changes or errors. You should, probably, have a procedure whereby you are confident that the person who signs, for example, the Consent and

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Waiver to Release Records is your client. It would be most unfortunate if some person other than the client were to sign a consent and waiver and then obtain unlawfully the client's complete record.

Issue IX

Is it acceptable to have a blanket agreement signed by a client for multiple purposes, e.g., agreeing to services, consent for billing, etc.

The answer to Issue IX, in our opinion, is no.

Discussion

Please refer to Issue I. In Issue I we discussed that portion of the Act that provides that a person may refuse to conduct other transactions by electronic means. Hence, if they agree to use electronic means to consent to treatment doesn't mean they would consent to use electronic means to release information. Hence, I would consider using a separate consent agreement with your client for all of the items you have listed under agenda item number 8. The following is an example:

WEST MICHIGAN COMMUNITY MENTAL HEALTH SYSTEM

Date: \_\_\_\_\_

Re: Consent To Treatment

The undersigned client and West Michigan Community Mental Health System hereby agrees to use electronic means as set forth in Public Act 2000 No. 305, for the consent to treatment by clinicians and physicians in the employ of West Michigan Community Mental Health Systems. This agreement applies to the following forms:

• [Insert here the consent forms you wish to use and have the client sign by electronic signature.]

This agreement shall last for six (6) months from the date of this agreement, but may be rescinded by either party, for any or no reason, upon ten (10) business days written notice sent by ordinary mail to the office of West Michigan Community Mental Health System or the residence of the employee. The time of the notice period shall commence the day after the notice is mailed.

The parties agree that this agreement applies only to the transaction of the consent to treatment

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WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

WEST MICHIGAN  
COMMUNITY MENTAL  
HEALTH SYSTEM:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
EMPLOYEE

This may be cumbersome and even unnecessary, but to play it safe, I would consider each item under your agenda 8 as a separate transaction. I would renew the above every six (6) months. If you are ever questioned about the use of electronic means as to any topic under agenda item 8, you could then produce the consent by the client the specific agreement by the client as to each agenda item. Some clients may not want to use electronic means regarding release of information, but may have no problem using the same regarding billing. Again, keep in mind the Act is new and the use of electronic means is new. The State isn't even using electronic signatures.

Issue X

Is it permissible to move clinical documentation electronically internally and/or externally, and, if so, do you need the client's permission to do so?

Discussion

As I see it, the Act doesn't help much on this issue. The Act contemplates a transaction between 2 or more persons and if some of your transactions involve the CMH the client and a clinician, then I would anticipate that you could move the information internally and externally between the clinician, the client and your records and/or the clinician supervisor's records. I believe the best answer for this issue is that you would move information, etc. by electronic means both internally and externally the same way you now move the existing documentation transaction and information. As I see it, electronic means is just another way to compile, store and use information, and or record transactions. Instead of paper, you are now using a computer program and electronic means to carry out a transaction.

I do not think you specifically would need your client's permission to move clinical documentation. If your client has agreed to use electronic means to say consent to treatment, I believe it is then implicit that the client would consent to move the document in the same manner you would move the document that is generated by non-electronic means, e.g., move the document to your psychiatrist, your supervisors, your peer review committee, etc.



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Issue XI

Can a client sign a log in/receipt log indicating receipt/agreement  
without signing the document itself?

Discussion

I am not sure I understand the above issue. Hence, I will answer the same simply. Any document that requires a signature should be signed. I would make no exception to this rule. If the question ever came up about whether or not a client agreed to a certain transaction or you needed the client to be bound by a certain transaction and you don't have the client's signature on the same, you are taking a chance. If the document is important enough and actually requires a signature, then it is important enough to have the document itself signed.

I trust the above answers at least in some way your agenda items. I am sure we will provide more answers after you have reviewed the above and we have had our meeting in January.

Once again, I thank you for the opportunity to be of service and remain,

Very truly yours,

**CONFIDENTIAL  
ATTORNEY/CLIENT PRIVILEGE**

Robert P. Tremp

RPT/kas