West Michigan CMH	**Duty To Warn**			
	Chapter:	Board Service and Program Administration	**Policy #**	2-7-2
	Section:	CMH Emergency Services	**Revision #**	3

I. **PURPOSE:** To establish policy and procedures for using Duty to Warn process.

II. **APPLICATION:** All mental health programs and services operated by the West Michigan Community Mental Health Governing Body.

III. **REQUIRED BY:** Michigan Mental Health Code Section 946 (2).

IV. **DEFINITIONS:**

Individual: A person requesting or currently receiving CMH services, or a third party, such as law enforcement, guardian, custodian parent of a minor, or a representative from a foster care home, hospital or nursing facility requesting CMH emergency services for a person in its care.

Confidentiality: All information received and maintained by CMH regarding an individual shall not be disclosed to any other entity without specific written authorization of the individual or their court appointed guardian, except under provisions of Public Act 258, of 1974, as amended.

42 CFR, Part 2, Subpart B, Sec. 2.11 Disclose or disclosure means a communication of [an alcohol or drug abuse] patient identifying information, the affirmative verification of another person's communication of [patient] PHI, or the communication of any information from the record of a patient who has been identified.

V. **POLICY:** It is the policy of West Michigan Community Mental Health to disclose without consent a report of a Threat of Violence against a Third Person as a Duty to Warn. If an individual communicates to a mental health professional who is treating the individual, a threat of physical violence against a reasonably identifiable third person and the individual has the apparent intent and ability to carry out the threat in the reasonable foreseeable future, the mental health professional has the duty to take action to protect the best interests of the individual by warning/protecting the third person. (See MH Code Sec. 946 (2).)

VI. **PROCEDURES:**

A. If an individual communicates to a mental health professional who is treating the individual a threat of physical violence against a reasonably identifiable third person and the individual has the apparent intent and ability to carry out the threat in the reasonably foreseeable future, the mental health professional has the duty to take action to protect the best interests of the individual by warning /protecting the third person. (See MH Code Sec. 946 (2))

B. The clinician should conduct a full Violence Assessment template in the EHR that includes a determination of whether the situation meets all of the Duty to Warn criteria. If clear imminent danger exists, completion of this document should follow the appropriate notification of threatened individuals and police.

C. All possible interventions to protect potential victims, while protecting the confidentiality of the individual are to be explored, as time is available, before confidentiality is breached. Additionally, any procedures outlined in this policy are to be temporarily arrested when delaying an intervention could compromise safety of anyone involved.

D. In the event that the clinician suspects that the criteria for a Duty to Warn situation has been met, he/she will consult verbally, either by phone or face to face, with the supervisor/designee. The clinician will provide a thorough case presentation to the supervisor/designee with all relevant facts to help an informed determination to be reached. If the immediate Supervisor was not available and consultation occurred with a designee, the supervisor completing the consultation will contact the program Director and provide an updated report of the consultation outcomes.

E. If the supervisor concurs that the situation meets criteria of a Duty to Warn, the clinician will make a reasonable attempt to inform the threatened person of the threat **and** inform the appropriate local law enforcement of the threatened person, or the state police clearly documenting all actions taken in the record of the person served.

F. When Duty to Warn criteria is met and the threatening individual is appropriately secured, the CMH clinician should take the following steps:

   a. Still provide notice to the threatened 3rd party and the appropriate police authorities explaining that a Duty to Warn threat has been made and that the individual is currently secured.
   b. Communicate very clearly to the facility/personnel securing the individual that Duty to Warn criteria has been met along with the details that allows the facility/personnel to address and monitor the situation accordingly. The completed Violence Assessment from the EHR must also be provided.

G. If it is determined that the threatened person is a minor or an “incompetent” adult, that individual should not be contacted directly. Rather, the clinician should identify and notify the appropriate parent, legal guardian, or advocate of the individual **and** contact Michigan DHHS’s Central Intake Unit for Abuse and Neglect in the county where the threatened person lives.

H. If the consulted Supervisor determines that the situation does not meet the criteria of a Duty to Warn scenario, and the clinician disagrees with that determination, the clinician may consult with the Chief Clinical Officer and/or the Chief Healthcare Integration Officer for a second opinion and determination. If/when it is deemed necessary, the Chief Clinical Officer and/or the Chief Healthcare Integration Officer may call an emergency meeting of the Clinical Oversight Committee to hear the case and make a final determination.

I. Clinicians will follow standard documentation procedures including documenting all consultation contacts, the Duty to Warn Documentation Form (Form # CR067), the Critical Incident Report (Form EC #001), and the Violence Assessment (Form #CR033). The Duty to Warn Documentation Form walks the clinician through the process and the necessary documentation to record. This form is to be forwarded to

the Customer Engagement Reps to be scanned into the individual's clinical file. In addition, a copy is to be forwarded to the Rights Office.

J. According to the Michigan Mental Health Code, the Mental Health Professional treating the person served has the Duty to Warn. When an un-credentialed/unqualified staff member directly learns of a threat, he/she should immediately inform the Mental Health Professional and/or an available Clinical Supervisor to address the situation.

K. Clinicians who follow the guidelines set forth by the Mental Health Code for Duty to Warn situations do NOT violate confidentiality regulations/laws. At the same time, it is important that clinicians take all necessary steps to determine that the Duty to Warn criteria has been met. In addition, he/she must document all supporting facts that indicate that the report was made in good faith.

L. APPLICABLE TO ALL SUBSTANCE USE DISORDER SERVICE RECIPIENTS

42 CFR, Part 2 provides no permitted disclosure for duty to warn reporting. However, if a SUD individual meets the criteria as described in the above referenced Duty to Warn procedures the SUD clinician will make a reasonable attempt to inform the threatened person, the appropriate local law enforcement of the threatened person or the state police **without making any reference to the fact that the individual is receiving SUD services and no inference that the caller is a SUD therapist** and clearly document all actions taken in the SUD individual's record.

VII. SUPPORTING DOCUMENTS:

Refer to:
Duty to Warn Documentation (Form # CR067)
Violence Assessment (Form # CR033)

VIII. POLICY/PROCEDURE REVIEW:

REV#	APPROVED BY	Policy/Procedure	DATE
NC	Unknown		09/2011
NC	Unknown		12/2011
	Unknown		05/2014
	Unknown		01/2017
	Unknown		10/2019
2	COC	Title changes	05/2021
2	COC	Annual Review	05/2022
3	COC	Procedure	07/2023
***Board Approval Date**: 11/16/2010*			

IX. CHIEF EXECUTIVE OFFICER ENDORSEMENT:

I have reviewed and approved of policy # 2-07-02 Revision# 3.

CEO: Lisa A. Williams Approval Signature:_____