




Policy/Procedure Title: Confidentiality/Disclosure, and Privileged Communications	Policy and Procedure #: 04-001	<u>Review Dates</u>	
Category: Recipient Rights Subject: To ensure confidentiality, privileged communications, and recipient access to recipient records according to the requirements of applicable State and Federal laws.	Prepared by: The Office of Recipient Rights	09/10/2025	
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	Effective Date: 04/22/1983	Last Revised Date: 05/05/2025	

I. POLICY

Information in the record of a recipient and other information acquired in the course of providing mental health and substance abuse services to a recipient shall be kept confidential and shall not be open to public inspection. All employees, volunteers, student interns and persons under contract with HealthWest who share in the care of a recipient and have a need to know the information to perform their job duties may access recipient records.

II. PURPOSE

To ensure confidentiality, privileged communications, and recipient access to records according to applicable State and Federal laws.

III. APPLICATION

All HealthWest employees, volunteers, student interns, and persons under contract with HealthWest.

IV. DEFINITIONS

- A. **Confidential Information:** Any information in a recipient's records or otherwise obtained in providing services, including demographic, clinical billing, and coordination of care information.
- B. **Privileged Communication:** Communication made to a psychiatrist or psychologist in connection with examination, diagnosis, or treatment of a recipient, or to another person participating in such services; and independent privileges that protect communications with licensed social work professionals. *See MLC 330.1750; MCL 339.1610.)
- C. **Holder of the Record:** The HealthWest program / unit responsible for maintaining the recipient's designated records set.
- D. **DRM:** Disability Rights Michigan, Michigan's protection and advocacy system.
- E. **42 CFR Part 2 Records:** Substance use disorder treatment records subject to additional federal protections.

V. PROCEDURE

- A. **Confidentiality Standard:** All information in a recipient's records and information acquired in providing services shall be kept confidential and is not open to public inspection.
- B. **Notice in Record:** A summary of Section 1748 of the Mental Health Code shall included in each recipient file.
- C. **Accounting of Disclosures:** For each disclosure, document (1) information released; (2) to whom; (3) the purpose requested; (4) how the disclosure is germane to the state purpose and protection of identity when practicable; (5) the sub section of law permitting disclosure (e.g., MCL 330.1748); and (6) notice to the recipient of the information that further disclosure must be consistent with the authorized purpose.
- D. **Disclosures as Required/Permitted by law (without consent unless privileged):** Disclose confidential information only when requested under one or more of the following:
 1. Court orders, search warrants, or subpoenas of a court of record, or subpoenas of the legislature, unless the information is made privileged by law.
 2. Prosecuting attorney participation in Mental Health Code proceedings.
 3. Recipient's attorney with consent of the recipient/guardian or parent of a minor who has legal and physical custody (as applicable). Absent valid consent, non-representing attorneys must present a certified court order.
 4. Auditor General as necessary to discharge constitutional responsibilities.
 5. Michigan Department of Health and Human Services (MDHHS) where necessary to discharge legal responsibilities.
 6. Compliance with other law requiring disclosure.
 7. Benefits for surviving spouse/closest relative, only when designated personal representative or with court order.
- E. **The Holder of a record:** may disclose information as necessary for treatment, coordinator of care, or payment for the delivery of mental health services, in accordance with the Health Insurance and Portability and Accountability Act of 1996, Public Law 104-191.
- F. **Child Abuse/Neglect Requests (CPS):** Upon written notice of a child abuse or neglect investigation and a written request from Child Protective Services (CPS), the mental health professional will review all mental health records and information in the professional's possession to determine what is pertinent to the investigation. Within 14 days after receipt of the request, the mental health professional will release those pertinent mental health records and information to the CPS caseworker or administrator directly involved in the investigation.
- G. **Consent-Based Disclosures:** Except as noted otherwise, confidential information may be disclosed with written consent from: (1) the recipient; (2) the recipient's guardian with authority to consent; (3) the parent of a minor who has legal custody; or (4) the court-appointed personal representative or executor of the estate of a deceased recipient, unless, in the written judgment of the holder of the record, the disclosure would be detrimental to the recipient for others.
- H. **Recipient Direct Access (Post-3/28/1996 Entries):** For case entries made after March 28, 1996, disclose information made confidential by the Code to an adult recipient upon

request if they have no guardian and have not been adjudicated incompetent. Comply expeditiously and no later than the earlier of 30 days after the receipt of the request or if the recipient is in treatment before discharge.

- I. **Determination of Detriment:** Unless MCL 330.1748(4) applies, to the Executive Director may determine disclosure would be detrimental to the recipient or others. If the record is onsite, decide within three business days. Provide written notice of the decision and justification to the requester.
- J. **Appeal of Detriment:** A person who disagrees may file a recipient rights complaint with ORR (Department, CMHSP, or licensed hospital responsible for the original determination).
- K. **Partial Disclosure:** If detriment is found, determine whether part of the information may be released without detriment. Do not withhold if the benefit to the recipient outweighs the detriment.
- L. **Private Physicians/Psychologists (Legal Proceedings):**
 1. A physician/psychologist who presents identification and a certified court order appointing them to examine a recipient shall be permitted to review, on provider premises, records concerning the recipient. Notify them before review when records contain privileged communications that cannot be disclosed in court, absent waiver or lawful exception.
 2. If subpoenaed, inform the court/issuing entity and the Attorney General (when involved) if the requested information is privileged. Privileged information shall not be disclosed unless permitted by waiver or other conditions that permit/require disclosure by law.
- M. **Search Warrants:** Staff shall immediately notify their Supervisor when presented with a search warrant. The Supervisor will present warrant documents to the Privacy Officer for review and direction before compliance.
- N. **Prosecutor—Non-Privileged and Certain Privileged Information:** A prosecutor may receive non-privileged information or privileged information permitted under MCL 33.1750(3) that relates to participation in proceedings under the Code (e.g., witnesses to acts supporting involuntary admission criteria; information relevant to alternatives to admission; other information designated in provider policy).
- O. **Discretionary Disclosures by Holder of the Record:**
 1. **Benefits:** As necessary for a recipient to apply for or receive benefits, limited to situations where benefits accrue to the provider or are subject to collection for liability for services.
Research/Evaluation/Accreditation/Statistics: Permitted when identification is essential or impractical to prevent and not be harmful; otherwise, de-identify.
 2. **Compelling Needs/Substantial Probability of Harm:** Disclose to providers/public agencies based on a substantial probability of harm to the recipient of others.
- P. **Disability Rights Michigan (DRM):** HealthWest shall grant a representative of Disability Rights Michigan access to the records of all of the following:
 1. A recipient, if the recipient, the recipient's guardian with authority to consent, or a minor's parent(s) with legal and physical custody of the recipient, have consented to the access.
 2. A recipient, including a recipient who has died or whose whereabouts are unknown,

if all of the following apply:

- a. Because of a mental or physical condition, the recipient is unable to consent to access.
 - b. The recipient does not have a guardian or other legal representative, or the recipient's guardian is the State.
 - c. Disability Rights Michigan has received a complaint on behalf of the recipient or has probable cause to believe, based on monitoring or other evidence, that the recipient has been subject to abuse or neglect.
3. A recipient who has a guardian or other legal representative if all of the following apply:
- a. A complaint has been received by Disability Rights Michigan or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
 - b. Upon receipt of the name and address of the recipient's legal representative, Disability Rights Michigan has contacted the representative and offered assistance in resolving the situation.
 - c. The representative has failed or refused to act on behalf of the recipient.

Q. **Peer Review Confidentiality.** Records/data/knowledge collected for peer review (including MCL 330.1143a(1)) are confidential, used only for peer review, are not public records, and are not subject to subpoena.

R. **Clinical Purpose Releases.** When authorized by the individual/legal representative for clinical purposes, release a copy of the entire medical and clinical record to a provider of mental health services.

S. **Record Amendment / Correction.** After gaining access to treatment records, a recipient guardian or parent of a minor may challenge accuracy, completeness, timeliness, or relevance of factual information. Allow insertion of a statement of correction / amendment, which becomes part of the record.

T. **Serious Communicable Diseases (Public Act 488 and related laws).** Maintain strict confidentiality of all reports / records / data related to testing, care, treatment, reporting, and research associated with serious communicable diseases (e.g., HIV / AIDS, TB, VD). Use HealthWest Form No. 001 for disclosures, disclose to another provider when urgent care is required; follow PA 89/490 requirements (e.g., partner notification via contracted physicians, disclosures regarding known health threats).

U. **45 CFR Part 2 – Substance Use Disorder Records.**

1. **Covered Programs.** Programs that provide SUD diagnosis, treatment, or referral and are federally assisted.
2. **Protected Information.** Any recipient-identifying SUD information obtained for diagnosis, treatment, or referral; may not be used to initiate/substantiate criminal investigations.
3. **Not Restricted.** Disclosure that an identified individual is not and never has been a recipient.
4. **Permitted Internal Communications.** Among program staff and with entities having direct administrative control; with qualified service organizations under written agreement.
5. **Mandatory Reports / Exceptions.** Crime on a program premises / against staff, suspected child abuse / neglect.
6. **With Consent.** Competent adult; court-appointed guardian; minor self-consent rules; decreased recipients-priority order of personal

- representative/spouse/parent/sibling/children.
7. **Medical Emergency Disclosures.** To medical personnel where immediate intervention is required; immediately document (recipient; recipient's/medical personnel's affiliation; disclosing staff; date/time; nature of emergency).
 8. **Research/On-Site Reviews/Court Orders.** Disclose under tightly controlled conditions and court orders only when good cause is found and narrowly tailored; note that a court order lifts federal prohibition but may require a separate subpoena/mandate to compel release.
- V. **Ownership of the Record.** The record is the property of the Board of HealthWest; the information belongs to the recipient. The recipient generally has the right to examine/obtain a copy and direct HealthWest to permit a third party to examine/obtain a copy, subject to applicable laws and reasonable fees.
- W. **Privileged Communications (Non-Disclosure).** Do not disclose privileged communications in civil, criminal, legislative, or administrative proceedings unless the recipient has waived the privilege or a statutory exception applies. Exceptions include, for example: condition introduced by recipient as element of a claim/defense; mental health code proceeding with prior notice; competence/guardianship proceedings with prior notice; malpractice actions against the professional; court-ordered examinations (limited purpose); competence-to-stand-trial contexts (limited issues). When disclosure of privileged communication is prohibited, do not disclose the fact of examination/diagnosis/treatment except as allowed (e.g., certain health insurer determinations). Unless disclosure is permitted because of an express waiver of privilege or because of other conditions that, by law, permit or require disclosure, privileged communications shall not be disclosed.
- X. **Breach/Penalties & Discipline.** Recipients may bring civil suits for damages for breaches. Courts may impose penalties for unauthorized SUD disclosures (federal criminal penalties) and for breaches of serious communicable disease confidentiality (misdemeanor penalties). Staff who violate confidentiality may also be subject to disciplinary action.
- Y. **Duty to Warn (MCL 330.1946).** When a credible threat to an identifiable victim exists and serious intent with foreseeable peril is present, act in a timely manner as required by law (e.g., hospitalize/initiate proceedings; and/or warn the threatened individual and notify law enforcement, with additional notifications when the threatened person is a minor or legally incompetent). Document all actions taken.

VI. REFERENCES

Michigan Mental Health Code: MCL 330.1748, 330.1749, 330.1750, 330.1752, 330.1946
Administrative Rule: R 330.7051
42 CFR Part 2 (Confidentiality of SUD records)
Public Act 488 (serious communicable diseases), related PA 89/490
Applicable court rules and federal/state privacy laws (including HIPPA)

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