

# SANILAC COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

## CLINICAL POLICY

**NUMBER: RR005**

**NAME: CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

INITIAL APPROVAL DATE:	07/30/1996	BY: Sanilac CMH Board
STAKEHOLDER REVIEW:	02/21/2023	BY: Recipient Rights Advisory Comm.
(LAST) REVISION DATE:	09/17/2019	BY: Recipient Rights Advisory Comm.
(LAST) REVIEW DATE:	07/27/2023	BY: Policy Committee
DISCONTINUED DATE:	NA	REPLACED BY: NA

### I. PURPOSE

To provide an official written policy that ensures the rights of confidentiality enumerated in Section 748 and 748(a) of Act 290, Michigan Public Acts of 1995, as amended, and Part 7 of the Administrative Rules of the Michigan Department of Community Health.

### II. APPLICATION

Populations: **ALL**  
Programs: Direct: **ALL**  
Contracted: **ALL**

### III. POLICY

It is the policy of Sanilac County Community Mental Health Authority that information in the record of an individual receiving services and other information acquired in the course of providing services shall be kept confidential and shall not be open for public inspection. The record holder, only under the conditions hereinafter described, may disclose information. Any person receiving confidential information shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

If information made confidential by this section is disclosed, the identity of whom it pertains to shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which it is sought.

It is the policy of Sanilac County Community Mental Health Authority that the preferred method of releasing information is to be in written form. Information may be released via telephone in the situation where the person releasing the information can be reasonably sure that the person receiving the information is who he/she says that they are. This method is only to be used in an emergency and is limited to clinical staff and/or the records coordinator.

Information should be released via the fax machine in the case of an emergency only. Sanilac County Community Mental Health Authority will only release information over the fax to other providers, clinics and law offices. A sample fax will be sent ahead of the actual information to assure that the faxed information is being sent correctly. Sanilac County Community Mental

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Health Authority will accept releases via the fax machine, but the receiver should still request an original release from the sender.

Sanilac County Community Mental Health Authority will accept photocopies of releases of information. It is preferred that we have original releases, and these should be requested whenever possible.

Sanilac County Community Mental Health Authority will use, accept, and honor the standard release form, MDHHS-5515. Individuals have the right to revoke their consent through verbal or written means at any time. Should an individual end services for any reason, the consent will end the date of the discharge from services and new consent forms will be required should the individual initiate services again.

The records, data and knowledge collected for or by persons or committees assigned a peer review function, including the review function under Section 143a (1) of the Mental Health Code, are confidential, are used only for the purpose of peer review, are not public records and are not subject to court subpoena.

### **IV. DEFINITIONS**

**Individual** – means an individual receiving services from Sanilac County Community Mental Health Authority.

**Confidential Information** – means all information in the record of an individual receiving services, including:

- a. Information acquired in diagnostic interviews or examinations
- b. Results and interpretations of tests ordered by a mental health professional
- c. Progress notes or other entries by mental health professionals and support personnel concerning the individual receiving services' condition or progress

**Privileged Information** – means a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of an individual receiving services, or to another person while participating in the examination, diagnosis or treatment or a communication made privileged under other Federal or state law.

### **V. STANDARDS**

- A. For case record entries made subsequent to March 28, 1996, information shall be disclosed to an adult individual, upon their request, if the individual does not have a guardian and has not been adjudicated legally incompetent. The holder of the record shall comply with such request for disclosure as expeditiously as possible, but in no event, later than 30 days after receipt of the request, or, if the individual is receiving treatment from the holder of the record, before the individual is released from treatment.

For records prior to March 28, 1996, the Chief Executive Officer (CEO) may make a determination that disclosure of information may be detrimental to the individual or others. If the CEO declines to disclose information because of possible detriment to the individual or others, then the CEO shall determine whether part of the information may be released without detriment. A determination of detriment shall not be made if the benefit to the individual from the disclosure outweighs the detriment. If a request for information has been delayed for this reason, the CEO shall review the request and make a determination within three (3) business days if the record is on site or ten (10) business days if the record is off-site, as to whether disclosure would be detrimental. The CEO shall provide written

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notification of the determination of detriment and justification for the determination to the person who requested the information. When a determination of detriment has been made and the individual seeking disclosure disagrees with the decision, he/she may file a Recipient Rights Complaint with the Sanilac County Office of Recipient Rights.

After having gained access to treatment records, the individual receiving services, guardian, or parent of a minor individual, may challenge the accuracy, completeness, timeliness or relevance of factual information in the individual's record. The individual or other empowered representative is allowed to insert into the record a statement correcting or amending the information at issue and this statement will be made a part of the individual's record.

- B. Information made confidential by this section shall be disclosed only under 1 or more of the following circumstances, except as otherwise provided in this policy:
1. Under orders or subpoenas of a court of record, or subpoenas of the legislature, unless the information is made privileged by some provision of law
  2. To a prosecuting attorney, as necessary for the prosecuting attorney to participate in a proceeding governed by the Mental Health Code. A prosecutor may be given non-privileged information or privileged information which may be disclosed if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission, information relevant to alternatives to admission to a hospital or facility, and other information designated in policies of Sanilac County CMH.
  3. To an attorney for the individual, when the individual has given consent, the individual's guardian with authority to consent or the parent with legal and physical custody of the minor individual
  4. When necessary in order to comply with another provision of law
  5. To the Department of Health and Human Services, if the information is necessary for that office to discharge a responsibility placed upon it by law
  6. To the office of the Auditor General, if the information is necessary for that office to discharge its constitutional responsibilities
  7. To the surviving spouse, or if none, the closest relative of the deceased individual (as defined by law) in order to apply for and receive benefits, but only if the spouse or closest relative has been designated the personal representative or has a court order (45CFR164.502 (g)(4)).

Information shall be provided to private physicians or psychologists appointed or retained to testify in civil, criminal or administrative proceedings as follows:

1. The physician or psychologist, who presents identification and a certified copy of a court order appointing he/she to examine an individual for the purpose of diagnosing the individual's present condition, shall be permitted to review, in the office of Sanilac County Community Mental Health, the individual's record. Physicians or psychologists shall be notified before the review when records contain privileged communication that cannot be disclosed in court.

The court or other entity that issues a subpoena or order and the Attorney General's Office, when involved, shall be informed if subpoenaed or ordered information is privileged under a provision of law. Privileged information shall not be disclosed unless disclosure is permitted because of an express waiver of privilege or because of other conditions, by law, permit or require disclosure.

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- C. Except as otherwise provided in this policy under Standard #A, when consent is obtained from the individual, the individual's guardian with authority to consent, the parent with legal custody of a minor individual, or the court-appointed personal representative or executor of the estate of a deceased individual, information made confidential by this policy may be disclosed to all of the following:
  - 1. A provider of mental health services to the individual;
  - 2. The individual or his or her guardian, or the parent of a minor individual or another individual or agency unless, in the written judgment of the holder, the disclosure would be detrimental to the individual or others.
- D. The holder of an individual's record, if authorized to release information for clinical purposes by the individual or the individual's guardian or a parent of a minor, shall release a copy of the entire medical and clinical record to the provider of mental health services.
- E. Information may be disclosed, without the consent of the individual or legally authorized representative, in the discretion of the holder of the record under one or more of the following situations:
  - 1. As necessary for the individual to apply for or receive benefits only if the benefits shall accrue to the state or Sanilac County Community Mental Health or shall be subject to collection for liability for mental health services.
  - 2. As necessary for the purpose of evaluation, outside research, accreditation or statistical compilation. The individual who is the subject of the information shall not be identified from the disclosed information unless such identification is essential to the purpose it was sought or if preventing such identification would clearly be impractical, but not if the subject of the information is likely to be harmed by the identification.
  - 3. To providers of mental health or other health services or a public agency, if there is a compelling need for disclosure based upon a substantial probability of harm to the individual receiving services or to other individuals
- F. If Federal law requires, Sanilac County Community Mental Health Authority shall grant representatives of the Protection and Advocacy system designated by the Governor in compliance with Section 931, access to the records of all of the following:
  - 1. An individual, if the individual, the individual's guardian with authority to consent, or a minor individual's parent with legal and physical custody of the individual receiving services has consented to the access.
  - 2. An individual, including an individual who has died or whose whereabouts are unknown if all of the following apply:
    - a. Because of a mental or physical condition, the individual is unable to consent to access.
    - b. The individual does not have a guardian or other legal representative or the individual's guardian is the State;
    - c. The Protection and Advocacy system has received a complaint on behalf of the individual or has probable cause to believe, based on monitoring or other evidence, that the individual has been subject to abuse or neglect.
  - 3. An individual who has a guardian or other representative, if all of the following apply:

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- a. A complaint has been received by the Protection and Advocacy system or there is probable cause to believe the health and safety of the individual is in serious and immediate jeopardy.
  - b. Upon receipt of the name and address of the individual's legal representative, the Protection and Advocacy system has contacted the representative and offered assistance in resolving the situation.
  - c. The representative has failed or refused to act on behalf of the individual.
- G. Upon a request, in writing, from the Department of Human Services worker or administrative staff directly involved in a child abuse investigation, mental health records of any person who received services, may be released when there is substantial reason to believe that child abuse or neglect has taken place or when the child may be at substantial risk of harm. The mental health professional shall review the mental health records and determine if information on file may be pertinent to the investigative process. Within 14 days after receipt of the written request, the pertinent mental health records and information shall be released to the caseworker or administrative staff directly involved in the investigation.

Patient-health care professional privileges do not apply to records or information given under this section. Unless the mental health professional has acted in a grossly negligent or willful and wanton manner in the release of records under this section, they shall be protected from civil or administrative liability. A duty under this section does not alter a duty imposed under other statutes regarding reporting or investigation of child abuse and neglect.

- H. A summary of Section 330.1748 and 330.1748 (a) of PA 290 (Mental Health Code) will be included in each individual's case record.

### PROCESS FOR RELEASING INFORMATION

- I. A record shall be kept of all disclosures and shall, minimally, include the following:
- a. What information was released
  - b. To whom it was released
  - c. The specific need and purpose for which the information is to be used;
  - d. The format used to release the information
  - e. The subsection of Section 330.1748 and 330.1748(a) or other state law under which the disclosure was made
  - f. A statement indicating the information released is germane to the stated purpose.
  - g. A statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released.
- J. An Information Release Authorization form signed by the individual, his/her parent with legal custody if a minor, legally appointed guardian with the power to consent, or the court appointed personal representative or executor of the estate of the deceased individual, will be obtained whenever the individual, parent, guardian or executor will consent to, and there is a need for, having confidential information released to another person or agency.
- K. An Information Release Authorization form will contain:
- a. Individual's name, birth date, case number
  - b. The name of the program authorized to release the information

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- c. The name of the agency or person to whom the information is to be released
  - d. The specific information to be disclosed and the format used to release the information
  - e. The purpose for which the information is to be used and the need for this use
  - f. The date when the information is to expire
  - g. A notice to the receiver of the disclosed information that further disclosure must be consistent with the authorized purpose and within the time period for which the information was released
  - h. Verification that the person authorizing the release has been informed of the conditions under which the information may and shall be released as set forth in Section 330.1748 and 330.1748(a) of PA 290.
- L. The separate programs of Sanilac County Community Mental Health Authority, including contract agencies, may share information within its own system of services without compromising the individual's right to confidentiality.
- M. Confidential information shall not be released from an individual's record when that information requested is found in documents from or correspondence with other agencies for which the individual's original consent for release of information is not valid; it is these other agencies from which the information should be requested.
- N. Upon request, a copy of the information released will be provided to the individual, their guardian with the authority to consent, or a minor individual's parent with legal custody at no cost.
- O. An individual, their guardian, or the parent of a minor individual may challenge the accuracy, completeness, timeliness or relevance of factual information in the individual's record. They shall be allowed to insert a statement into the record correcting or amending the information at issue. The statement prepared by the individual receiving services, guardian, or parent of a minor receiving services will then become part of the individual's record.

## **VI. ATTACHMENTS**

## **VII. REFERENCES**

Michigan Mental Health Code Sections 330.1748, 330.1748(a), 330.1749, 330.1752  
Administrative Rules (PA 258 of 1974), 330.7051 (revised)  
45CFR 164.502 (g) (4)  
Sanilac County Community Mental Health Authority Policies:  
RR036-Duty to Warn  
RR004 Recipient Abuse and Neglect