

**NORTHEAST MICHIGAN COMMUNITY MENTAL HEALTH AUTHORITY
POLICY & PROCEDURE MANUAL**

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PERSONNEL
(Manual Section)

**RECIPIENT RIGHTS:
CONFIDENTIALITY - DISCLOSURE & SECURITY OF INFORMATION**
(Subject)

Approval of Policy

Dated:

Policy Inception Date:

January 11, 1996

Last Revision of Policy Approved:

August 6, 2018

Comment [DH1]: Policy approved by the Board as Policy #2720, 1/11/96, Policy # change from 2720 to 3810 approved by the Board 5/7/98; Revisions approved by the Board 9/14/2000, Revisions approved by the Board 3/08/01; Administrative approval of policy revision 11/26/2003; Administrative Approval of Policy Revision dated 08/16/2006; Administrative approval of policy revision dated 04/03/13; Administrative Approval of policy revision dated 08/06/2018

•1 POLICY:

It is the policy of the Agency that all information in the record of the individual served, and other information acquired in the course of providing mental health services to an individual shall be kept confidential and shall not be open for public inspection. Information may be disclosed by the record holder only under conditions hereinafter described.

Information shall be provided 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.

•2 APPLICATION:

All employees, all consumers.

•3 DEFINITIONS:

CONFIDENTIAL INFORMATION: means all information in the record of a consumer, any information acquired in the course of providing mental health services to the consumer, and the following:

1. Information acquired in diagnostic interviews or examinations;
2. Results and interpretations of tests ordered by a mental health professional;
3. Progress notes or other entries by mental health professionals concerning the consumer's condition or progress.

CONSUMER RECORDS: means all forms of the consumer record including written, electronic, duplicated, and faxed copies. The record is considered a legal document and it may be admissible as evidence in a court of law.

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HOLDER OF RECORD: refers to Office Manager or designee.

PRIVILEGED COMMUNICATION: means that communication referred to in Section 330.1750 of PA 258 (Mental Health Code). See attached exhibit.

SUBPOENA: a command to appear at a certain time and place to give testimony on a certain matter.

SUBPOENA DUCES TECUM: a subpoena that requires a production of books, papers and/or other items.

REFERRAL SOURCES: includes, but is not limited to, health care professionals, agencies, courts, schools, teachers, employers, attorneys, other health care professionals, or persons engaged in other professional service occupations. Referral sources do not include family, significant others, relatives, friends, acquaintances or any persons with whom the prospective consumer or consumer is involved on a social, business, casual, or family level.

•4 CROSS-/REFERENCES:

Policy 2585 - Records Retention & Disposal Policy
Mental Health Code Sections 330.1748 and 330.1750
Administrative Rules 7051
42 CFR, 164.512

•5 FORMS AND EXHIBITS:

[Exhibit B - Section 330.1748 & 50 of PA 258 \(Mental Health Code\)](#)

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Administrative Approval of Procedure Per: _____

Dated: _____

November 5, 2018

Comment [DH2]: Administrative approval of Procedure as Policy #2720, 2/13/97; Administrative approval of revision 11/13/97; Administrative approval of Policy # change from 2720 to 3810 and procedure change, 5/7/98; Administrative approval of revision to procedure 9/14/2000; Administrative approval of revisions to procedure 3/8/01; Administrative approval of revision to procedure 11/26/2003; Administrative Approval of Procedure revision dated 08/16/2006; Administrative approval of procedure revision dated 11/28/2006

•6 PROCEDURE:

Confidentiality and Disclosure of Information

•6.1 APPLICATION:

All employees, all individuals receiving services

•6.2 OUTLINE / NARRATIVE:

When requested, information shall be disclosed only under one or more of the following circumstances:

- A. Upon orders or subpoenas of a court of record, or subpoenas of the legislature for non-privileged information.
- B. To a prosecuting attorney as necessary for him to participate in a proceeding governed by Act 258 of the Mental Health Code.
- C. To an attorney for the individual receiving services, when consent has been given by the individual, individual's guardian with authorization to consent, or the parent with legal and physical custody of a minor child receiving services.
- D. When necessary in order to comply with another provision of the law.
- E. To the Michigan Department of Health and Human Services when the information is necessary for that office to discharge a responsibility placed upon it by law.
- F. To the office of the Auditor General when the information is necessary for that office to discharge its constitutional responsibilities. Audit teams from the Office of the Auditor General shall sign an agreement pledging to protect the confidentiality of individual's electronic health record information prior to conducting an agency audit.
- G. To a surviving spouse, or if none, to the individual(s) most closely related to the deceased individual, 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.

For case record entries made subsequent to the effective date of the amendatory act that added section 100a, (03/28/96) information made confidential by this section shall be disclosed to an adult individual receiving services, upon the individual's request, if the individual does not have a guardian and has not been adjudicated legally

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incompetent. Release is done as expeditiously as possible but in no event later than the earlier of 30 days of the request or prior to release from treatment.

ACCESS BY MICHIGAN PROTECTION AND ADVOCACY (MP & A):

If required by federal law, a representative of Michigan Protection and Advocacy Services shall be granted access to the records of all of the following:

- A. An individual receiving services, if the individual, the individual's guardian with authority to consent, or a minor child's parent with legal and physical custody of the child has consented to the access.
- B. An individual receiving services, including an individual who has died or whose whereabouts are unknown, if all of the following apply:
 - 1. Because of mental or physical condition, the individual is unable to consent to the access.
 - 2. The individual does not have a guardian or other legal representative, or the individual's guardian is the state.
 - 3. 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.
- C. An individual receiving services who has a guardian or other legal representative if all of the following apply:
 - 1. A complaint has been received by the protection and advocacy system or there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy.
 - 2. 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.
 - 3. The representative has failed or refused to act on behalf of the individual.

If Michigan Protection and Advocacy receives a complaint or has probable cause to suspect abuse, the following conditions must be met before MP&A may have access to records:

- 1. The request must be in writing.
- 2. The Agency must make a determination that it is reasonable to believe that the individual receiving services is or has been subjected to abuse or neglect.
- 3. The Agency must limit the disclosure to the relevant information expressly authorized by statute or regulation, and
- 4. The Agency must maintain documentation of all disclosures.

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RECORD RELEASE WHEN SUSPICIONS OF CHILD ABUSE OR NEGLECT:

Effective March 1, 1999, the Code mandates release of information as follows:

If there is a compelling need for records or information to determine whether child abuse or child neglect has occurred or to take action to protect a minor where they may be substantial risk of harm, a family independence agency caseworker or administrator directly involved in the child abuse or neglect investigation shall notify the Agency's professional that a child abuse or neglect investigation has been initiated involving a person who has received services from the Agency and shall request in writing mental health records and information that are pertinent to that investigation. Upon receipt of this notification and request, the Agency's professional shall review all mental health records and information in the Agency's possession to determine if there are mental health records or information that is pertinent to that investigation. Within 14 days after receipt of a request, the Agency's professional shall release those pertinent mental health records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation.

To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an individual who in good faith gives access to mental health records or information under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

A duty under this act relating to child abuse and neglect does not alter a duty imposed under another statute, including the child protection law, 1975 PA 238, MCL 722.621 to 722.638, regarding the reporting or investigation of child abuse or neglect.

METHOD BY WHICH INDIVIDUALS RECEIVING SERVICES MAY ACCESS PERSONAL RECORDS: Individuals may contact the office manager at NeMCMHA, or if needed, they may request the assistance of staff such as a recipient rights officer or a supervisor with making the contact. After contacting the office manager, the following process will take place:

- A. The individual and office manager/designee will arrange for an appointment to schedule the review. The appointment will be no longer than one (1) hour in duration.
- B. The individual and office manager/designee will meet in a private room.
- C. The individual will sign a release of information form.
- D. If a third party is present, the individual receiving services will sign an additional release of information form to authorize viewing by the third party.
- E. The office manager/designee will be present during the review.
- F. Upon completion of the record review, the office manager/designee will be responsible for securing the electronic health record.
- G. The office manager/designee will complete a disclosure form and file it in the individual's record.

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STATEMENT CORRECTING OR AMENDING INFORMATION:

An individual receiving services, guardian, or parent of a minor child receiving services, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the individual's record. The individual, guardian, or parent of a minor child 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.

STANDARDS:

- A. A summary of Section 330.1748 of PA 258 (Mental health Code) will be included in each individual's case record.
- B. A record shall be kept of all disclosures and shall minimally include the following:
 - 1. What information was released;
 - 2. To whom it was released;
 - 3. The purpose as stated by the person requesting the information for which the information is to be used;
 - 4. The subsection of Section 330.1748, or other state/federal law, under which the disclosure was made.
 - 5. A statement indicating the information released is germane to the stated purpose.
 - 6. Statement that the persons receiving the disclosed information can only further disclose consistent with the authorized purpose for which it was released.
- C. A fully completed Release of Information authorization form must be signed and dated by the individual receiving services or his / her legal guardian and witnessed for authorization to release information. The Release of Information authorization form is to contain:
 - 1. individual's name, date of birth, and case number,
 - 2. the name and full address of the person, agency, or organization to which the information is to be disclosed,
 - 3. the specific information to be disclosed,
 - 4. the purpose for the disclosure,
 - 5. the signature of the person authorizing the release of information,
 - 6. the date the authorization was signed,
 - 7. the signature of the individual witnessing the authorization,
 - 8. a notice that the consent is valid only for a specific period of time or for specified conditions,
 - 9. a notice that the consent may be stopped at any time by written or verbal request.
 - 10. a notice that the authorizing of the disclosure is voluntary and that services will not be affected if the consumer chooses not to sign the release, and
 - 11. a notice that any disclosure of information carries a potential for unauthorized re-disclosure and the information may not be protected by federal or state confidentiality rules.

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- D. Prior to release, all copied materials must be stamped, indicating it contains confidential information and that no further release of the information can be made without additional authorization from the consumer.
- E. The holder of an individual's record, when authorized to release information for clinical purposes by the individual or the individual's guardian or parent of a minor, shall release a copy of this Agency's entire medical and clinical record to the provider of mental health services.
- F. Except as otherwise provided in section 748.(4), if consent is obtained from the individual receiving services, the individual's guardian with authority to consent, the parent with legal custody of a minor child receiving services, or the court-appointed personal representative or executor of the estate of a deceased individual having received services, information made confidential by this section may be disclosed to all of the following:
- A provider of mental health services to the individual.
 - The individual or his or her guardian or the parent of a minor child or another individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the individual or others.

Unless section 748(4) of the act applies to the request for information, the director of the provider may make a determination that disclosure of information may be detrimental to the recipient or others. If the director of the provider declines to disclose information because of possible detriment to the recipient or others, then the director of the provider 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 recipient from the disclosure outweighs the detriment.

If the record of the recipient is located at the resident's facility, then the director of the provider shall make a determination of detriment within three (3) business days from the date of the request. If the record of the recipient is located at another location, then the director of the provider shall make a determination of detriment within ten (10) business days from the date of the request.

The director of the provider shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information. If a determination of detriment has been made and the person seeking the disclosure disagrees with that decision, he or she may file a recipient rights complaint with the Office of Recipient Rights of the Department, the community mental health services program or licensed hospital, whichever was responsible for making the original determination.

IN REGARD TO DUTY TO WARN:

If an individual receiving services communicates to a mental health professional who is treating the individual a threat of physical violence against a reasonably identifiable

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third person and the individual has the apparent intent and ability to carry out that threat in the foreseeable future, the mental health professional has a duty to take action as listed below. Except as provided in section 330.1946, a mental health professional does not have a duty to warn a third person of a threat as described in this subsection or to protect the third person.

A mental health professional has discharged the duty created above if the mental health professional, subsequent to the threat, does one or more of the following in a timely manner:

1. Hospitalizes the individual or initiates proceedings to hospitalize the individual under chapter 4 or 4a of the Mental Health Code.
2. Makes a reasonable attempt to communicate the threat to the third person and communicates the threat to the local police department or county sheriff for the area where the third person resides or for the area where the individual receiving services resides, or to the state police.
3. If the mental health professional has reason to believe that the third person who is threatened is a minor or is incompetent by other than age, takes the steps set forth in (2) and communicates the threat to the Department of Health and Human Services in the county where the minor resides and to the third person's custodial parent, noncustodial parent, or legal guardian, whoever is appropriate in the best interests of the third person.

IN REGARD TO LOCAL POLICE OR PROTECTIVE SERVICES:

Staff member shall immediately report to the Program Supervisor or the Director all information provided by an individual which reveals that substantial or serious physical harm may come to the individual or to another person in the near future.

For police and other law enforcement requests for information and search warrants, the following is adhered to:

1. An individual's record is not to be disclosed to police or other law enforcement agencies requesting information absent an individual's written authorization, unless:
 - a. The police or other law enforcement agency presents a Court Order or a search warrant signed by a judge expressly directing the service provider to release specific information.
 - b. The information is requested pursuant to a statutory requirement that such information be released pursuant to statutes regarding abuse and/or neglect of children or elders.

IN REGARD TO ATTORNEYS OTHER THAN PROSECUTING ATTORNEYS:

The holder of the record shall permit attorneys other than prosecuting attorneys to review on the premises any record containing information concerning the individual receiving services if:

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1. the attorney is retained or appointed by the court to represent the individual and presents identification and a consent or release executed by the individual.
2. the attorney does not represent the individual but presents a certified copy of an order from a court directing disclosure of information concerning the individual to that attorney.
3. the 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.

The holder of the record shall refuse written or telephone requests for information by attorneys unless such a request is accompanied or preceded by a certified true copy of an order from a court ordering disclosure of information to the attorney.

The holder of the record may give a prosecutor non-privileged information or privileged information which may be disclosed if it contains information relating to participation in proceedings under the Mental Health Code. Such information could include:

1. names of witnesses to acts which support criteria for involuntary admission.
2. information relevant to alternatives to admission to a hospital or facility;
3. other information determined by the Agency Director as necessary and pertinent to proceedings under the Mental Health Code.

IN REGARD TO PRIVATE PHYSICIANS AND PSYCHOLOGISTS:

The holder of the record shall provide information to private physicians and certified consulting psychologists appointed or retained to testify in civil, criminal, or administrative proceedings as follows:

1. Those who present identification and a certified true copy of a court order appointing them to examine an individual receiving services for the purpose of diagnosing the individual's present condition shall be permitted to review on the program's premises a record containing information concerning the individual.
2. They shall be notified prior to their review of the record when the records contain privileged communications which cannot be disclosed in court under Section 330.1750(2) of Act 258 (Mental Health Code), unless disclosure is permitted because of an express waiver of privilege or by law which permits or requires disclosure.

IN REGARD TO DISCRETIONARY RELEASE WITHOUT INDIVIDUAL'S/GUARDIAN'S AUTHORIZED CONSENT:

The holder of the record:

1. May disclose information enabling an individual to apply for or receive benefits or would be subject to collection for liability for mental health service.
2. May disclose non-identifying information for purposes of outside research, evaluation, accreditation, or statistical information provided that the person who is the subject of the information cannot be identified from the disclosed information only when such identification is sought or when preventing such identification

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should clearly be impractical, but in no event when the subject of the information is likely to be harmed by such identification.

3. May disclose to providers of mental or other health services or a public agency when there is a compelling need for disclosure based upon a substantial probability of harm to the individual or to other persons.

IN REGARD TO NEWS MEDIA:

The Agency Director shall be consulted in every event where the news media is requesting information, and shall obtain written consent by the individual receiving services (or parent of a minor or a guardian) before disclosing any information, even if the individual is not to be identified in the media.

IN REGARD TO P.A. 218, AFC SMALL GROUP HOME LICENSING RULES REGARDING CONFIDENTIALITY:

The records of the residents of a licensed small group home which are required to be kept by the home under Public Act 218 or rules promulgated under this act shall be confidential and properly safeguarded. These materials shall be open only to the inspection of the director of the Office of Child & Adult Licensing (OCAL), an agent of the director of OCAL, another executive department of the state pursuant to a contract between that department and the facility, as part to a contested case involving the facility, or on the order of a court or tribunal of competent jurisdiction. The records of a resident of a facility which are required to be kept by the facility under this Act or rules promulgated under this Act shall be open to inspection by the resident, unless medically contraindicated, or the guardian of the resident.

IN REGARD TO THE ELECTRONIC TRANSMISSION OF INFORMATION:

Information regarding individuals receiving services is not to be released to anyone via telephone lines or any other electronic means unless the information is released to persons properly authorized to have such information and verifying the identity of the caller and the organization or agency from which the call is originating.

Any requests for information regarding individual receiving services by any electronic means, including whether a person is an individual who receives services of the organization, are to be met with a polite no release of information.

When information is to be transmitted via telephone lines regarding individuals receiving services (e.g., facsimile machines; "on-line" transmissions), all efforts are made to connect to the proper receiving device to ensure that the individual's information is not transmitted to persons who are not authorized to receive the information.

Facsimiles are sent with a Fax Transmittal Cover Letter that contains information regarding the handling of confidential information if it is correctly or incorrectly transmitted.

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IN REGARD TO PEER REVIEW:

The records, data and knowledge collected for or by individuals or committees assigned a peer review function, including the review function under section 143a(1), are confidential, shall be used only for the purposes of peer review, are not public records and are not subject to court subpoena. This subsection does not prevent disclosure of individual case records pursuant to this section.

IN REGARD TO INDIVIDUAL'S HIV/AIDS STATUS:

Written reports regarding an individual's HIV Antibodies Test, whether the results are positive or negative and/or an individual's AIDS status are highly confidential. Written reports of this information from external sources may be included in the individual's electronic health record with appropriate safeguards.

1. An individual's HIV/AIDS status should not be referenced in written reports regarding the individual without the expressed written permission of the individual or his / her legal guardian.
2. Written information regarding an individual's HIV/AIDS status is not to be kept in any other record or file except the individual's electronic health record unless required by law, rule, or regulation.
3. To release information regarding an individual's HIV/AIDS status (positive or negative) to another resource, the written Release of Information authorization executed by the individual or his / her legal guardian must be specific regarding the release of HIV/AIDS status information.
4. Access to information regarding an individual's HIV/AIDS status is extended only to those personnel in the organization who have a need to know this information, or to have access to the individual's electronic health record in order to perform the functions of their positions.

IN REGARD TO AN INDIVIDUAL'S APPOINTMENT AND BILLING INFORMATION:

In addition to all clinical information and records about individuals being confidential, all non-clinical client-specific information and documentation is also confidential. Such documentation includes, but is not limited to, any appointment schedule, billing forms, financial information and data, and computer screens.

Any information and documentation regarding any and all individuals receiving services is to be treated in a manner that protects it at all times from the view or possession of any and all persons not authorized to have access to such information.

•6•3 CLARIFICATIONS:

•6•4 CROSS-/REFERENCES:

- A. Mental Health Code Sections 330.1748, 330.1749, 330.1750, and 330.1752

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- B. Administrative Rules 7051
- C. [Policy and Procedure #3805 “Abuse and Neglect Reporting.”](#)
- D. [Policy and Procedure #5200 “Consumer Records”](#)

•6•5 FORMS AND EXHIBITS:

[Exhibit A - Authorization to Release Information](#)

[Exhibit B - Copy of Section 330.1748 & 50 of Act 258, Public Acts of 1974.](#)

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Administrative Approval of Procedure Per: _____

Dated: _____

August 16, 2006

Comment [DH3]: Administrative approval of Procedure 9/14/2000; Administrative approval of revision to procedure 11/26/2003; Administrative Approval of Procedure revision dated 08/16/2006

•7 PROCEDURE:

Release of Information

•7.1 APPLICATION:

All employees, all consumers

•7.2 OUTLINE / NARRATIVE:

Information concerning any consumer's condition or treatment is permitted only with the prior knowledge and written consent of the consumer or the consumer's legal guardian. No information is to be released or to be requested from any source regarding a consumer unless a Release of Information authorization is properly executed for that purpose and the Release is included in the consumer's chart.

In instances where consultation with family members or significant other(s) is in the best interest of the consumer, the consumer/legal guardian's written consent is required.

A Release of Information authorization is required to send reports to referral sources. No report is sent without such a release being signed by the consumer or the consumer's legal guardian. The release is to be included in the consumer's chart.

The Agency complies with the requirements of the Mental Health Code of the State of Michigan and release of all information contained in the consumer's clinical record with a properly executed Release of Information authorization. According to the Code, the organization cannot reserve the right to summarize or withhold certain confidential materials if it is considered to be in the consumer's or others' best interest to do so.

To ensure the confidentiality of consumer information is protected through informed consent and choice for the release and/or obtaining of information regarding consumers, the following steps are taken:

1. A clinical or support staff member may prepare the Release of Information authorization form for obtaining or releasing information.
2. All sections on the form are to be completed.
3. The form is to be explained to the consumer and/or his / her legal guardian, and given to them to read.

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4. The form must be signed and dated by the consumer or his / her legal guardian if the consumer is a minor or if the consumer is unable to perform this task.
5. The signature of the consumer and/or his / her legal guardian is to be witnessed.
6. If the purpose of the Release of Information authorization is to obtain information, a photocopy of the Release of Information authorization is made and retained in the consumer's chart prior to being sent to the source from whom information is being requested.
7. If the purpose of the Release of Information authorization is to provide information to another resource, agency, organization, person, etc., the original Release of Information authorization is retained in the consumer's chart.

A properly executed Release of Information authorization signed by the consumer or the consumer's legal guardian from another organization, agency, etc. will be honored.

A Release of Information authorization is not required for contacts with third-party payors, case managers, and central diagnostic and referral agencies for such actions, but not limited to, insurance verification, records auditing, and services authorization purposes.

A Release of Information authorization is not required in situations where there is a "duty to warn" regarding a consumer's possible actions, in the event of a medical emergency or life-threatening situations related to the consumer if obtaining such authorization would cause an excessive delay in delivering treatment to the consumer, when a consumer's condition or situation precludes the possibility of obtaining written authorization, in the event a consumer is suspected of abusing or neglecting his / her children, in cases where the consumer is suspected of elder neglect or abuse, or if the consumer indicates the presence of a communicable disease which must be reported to the appropriate authorities.

A Release of Information authorization is not required for the transfer of a consumer to another clinician in the same facility or organization, or in the case of a consumer being seen by another clinician in the same facility or organization as part of the consumer's treatment.

In every case when clinical records are to be sent to another organization, agency, or individual, only copies are to be sent. The originals of all clinical documents are to be maintained at the Agency.

•7•3 CLARIFICATIONS:

•7•4 CROSS-/REFERENCES:

•7•5 FORMS AND EXHIBITS:

[Exhibit A – Authorization to Release Information](#)

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Administrative Approval of Procedure Per: _____

Dated:

November 26, 2003

Comment [DH4]: Administrative approval of Procedure 9/14/2000; Administrative approval of revision to procedure 3/08/01; Administrative approval of revision to procedure 11/26/2003

•8 PROCEDURE:

Response to Subpoenas

•8•1 APPLICATION:

All employees, all consumers

•8•2 OUTLINE / NARRATIVE:

All subpoenas and requests are responded to as follows:

1. The subpoena is date-stamped upon receipt.
2. If the subpoena is signed by an attorney or anyone other than a judge, ascertain that the subpoena is accompanied by a valid Release of Information authorization signed by the consumer or, if the consumer is deceased, the personal representative of the deceased's estate or, if the consumer is a minor or is incapacitated by the consumer's parent or legal guardian. If there is no valid release with the subpoena, the holder of the record shall contact the attorney and file an objection to the subpoena until the receipt of a signed release. A letter is submitted to the attorney with a copy sent to the consumer.
3. If the subpoena is signed by a judge, no release is required and the holder of the record shall submit to the court the requested information.

•8•3 CLARIFICATIONS:

•8•4 CROSS-/REFERENCES:

•8•5 FORMS AND EXHIBITS:

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Administrative Approval of Procedure **Per:** _____

Dated: _____

August 16, 2006

Comment [DH5]: Administrative approval of Procedure 9/14/2000; Administrative approval of revision to procedure 11/26/2003; Administrative Approval of Procedure revision dated 08/16/2006

•9 PROCEDURE:

Response to Referral Sources and Exchanging Information

•9•1 APPLICATION:

All employees, all consumers

•9•2 OUTLINE / NARRATIVE:

If a referral source refers an individual to the Agency, but the person referred does not contact the Agency or make an appointment and the referral source contacts the Agency regarding whether the person has made the appointment, the Agency may notify the referral source regarding the person not making an initial appointment. This is permitted because the person is not yet a registered consumer of the Agency.

If a referred person makes contact or an appointment for an initial interview and then cancels the appointment, does not keep the appointment, does not reschedule the appointment, or does reschedule the appointment, the Agency may not notify the referral source regarding the consumer not keeping the initial appointment. This is not permitted because the person is considered to be a registered consumer of the Agency. In order to notify the referral source, a written Release of Information authorization must be executed by the person or his / her legal custodial parent or legal guardian.

If a consumer or his / her legal guardian signs a Request for Services which, in effect, indicates that the consumer has requested and agreed to services, and has been seen face-to-face at the Agency, the consumer is a registered consumer. In order to notify the referral source that the consumer has been seen, a written Release of Information authorization must be executed by the consumer or his/her legal guardian.

In all cases, to share information about a consumer in treatment with a referral source and to obtain information from the referral source about the consumer, Release of Information authorization must be properly executed by the consumer or his / her legal guardian. To facilitate obtaining information, a facsimile (i.e., Fax) of a release authorization to obtain information may be sent to the referral source.

•9•3 CLARIFICATIONS:

•9•4 CROSS-/REFERENCES:

•9•5 FORMS AND EXHIBITS:

[Exhibit A – Authorization to Release Information](#)

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Administrative Approval of Procedure Per: _____

Dated: _____

April 3, 2013

Comment [DH6]: Administrative approval of Procedure 9/14/2000; Administrative approval of revision to procedure 3/08/01; Administrative approval of revision to procedure 11/26/2003; Administrative Approval of Procedure revision dated 08/16/2006; Administrative approval of Procedure revision dated 04/03/2013

•10 PROCEDURE:

Security of Confidential Information

•10•1 APPLICATION:

All employees, all consumers

•10•2 OUTLINE / NARRATIVE:

Consumer clinical record charts are legal, confidential documents. Therefore, they must be safeguarded at all times, including when they are in the possession of the organization, authorized records reviewers and/or clinicians who use consumer records charts as part of their providing services to consumers and documenting those services.

To ensure that consumer clinical records charts are accounted for, the following responsibilities are delineated:

1. Clinical records charts are available only to staff who have a need to access the chart because of services provided to or on behalf of consumers of services and/or their families, and for supervisory and administrative purposes. Those persons who have access to consumer clinical record charts include those persons involved in providing:
 - Treatment to the consumer,
 - Operations support regarding the consumer such as, but not limited to, scheduling, filing, billing and follow-up;
 - Case review;
 - External and internal chart audits; and
 - Quality improvement, utilization review, and recipient rights office during the course of an investigation.
2. Staff who are directly involved with the care of consumers or those who must access consumer records as part of their work may have access to those records for those purposes.

Violation of any procedure is to be recorded on an Incident Report that is to be forwarded to the staff person's supervisor, and the Recipient Rights Officer for review, recording and, action, as necessary.

NORTHEAST MICHIGAN COMMUNITY MENTAL HEALTH AUTHORITY
POLICY & PROCEDURE MANUAL

SAFEGUARDING COMPUTERIZED INFORMATION FROM DISASTERS:

To safeguard clinical and financial information regarding consumers, and administrative and operations data and information, the Agency performs systematic back-up of computerized data.

Data which has been backed-up is retained in the administrative offices of the Agency in a media safe as well as off-site. This procedure provides for minimum loss of data in the event of a disaster.

COMPUTER PASSWORDS:

Passwords are required for entering any computer at the Agency. Such passwords are given to staff on a “need to access” basis. Assigned passwords permit staff members to only access areas on the computer system that are relevant to their work.

Passwords are confidential. Staff members are cautioned not to reveal their passwords to anyone and are changed on a regular basis.

•10•3 CLARIFICATIONS:

•10•4 CROSS-/REFERENCES:

•10•5 FORMS AND EXHIBITS:

[Policy #3600 – Network Usage Policy](#)

**NORTHEAST MICHIGAN COMMUNITY MENTAL HEALTH AUTHORITY
POLICY & PROCEDURE MANUAL**

Administrative Approval of Procedure: _____	Dated: <u>April 3, 2013</u>
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Comment [D7]: Administrative Approval of Procedure dated 04/07/2011; Administrative Approval of Procedure dated 04/03/2012

•11 PROCEDURE:

Social Media

•11•1 APPLICATION:

All employees

•11•2 OUTLINE / NARRATIVE:

With this procedure, we acknowledge the use of social media in health care, and especially mental health care, involves information, that once posted to the internet is no longer under our control but accessible overtly or covertly by anyone who has access to the internet. This information has the potential to be stored somewhere in cyberspace indefinitely. This policy protects both the Agency and consumers of services from harm and unknown liabilities, now and into the unforeseen future. The Agency must protect against the danger that confidentiality of consumers of services can be easily breached via social media.

No employee may post information in any form, including pictures, about consumers of services using social media such as, but not limited to, Facebook, Twitter, "blogs," etc. This prohibition applies to any consumer the employee knows to be in treatment with the organization. Further, employees will not seek authorizations for release of information for the purpose of participation in social media.

Staff receiving invitations from consumers to participate with them in a social media ("friend requests," etc.) will respectfully decline if they have a working relationship with the consumer, explaining the Agency prohibits it for the protection of consumer confidentiality.

•11•3 CLARIFICATIONS:

•11•4 CROSS-/REFERENCES:

•11•5 FORMS AND EXHIBITS:

Northeast Michigan Community Mental Health

400 Johnson Street, Alpena, MI 49707

● Phone: 989-356-2161 ● Fax: 989-354-5898 ● Toll Free 800-968-1964

Authorization for Release of Confidential Information

Date: _____ ID#: _____ DOB: _____

Name: _____

I hereby authorize Northeast Michigan Community Mental Health to:☐ Release Information to ☐ Obtain Information from ☐ Exchange Information with

Organization/Name _____

Address _____

City _____ State _____ Zip _____

Information to be released:

- | | | |
|---|---|--|
| <input type="checkbox"/> Psychiatric Evaluation | <input type="checkbox"/> Annual/Assessment | <input type="checkbox"/> Individual Plan of Service |
| <input type="checkbox"/> Discharge Summary | <input type="checkbox"/> Medication Review | <input type="checkbox"/> Date of Screening/Hospitalization |
| <input type="checkbox"/> Medication Log/History | <input type="checkbox"/> Health Assessment | <input type="checkbox"/> Progress/Activity Note |
| <input type="checkbox"/> Recent Physical Exam | <input type="checkbox"/> Lab Results | <input type="checkbox"/> Educational Evaluation |
| <input type="checkbox"/> Academic Performance | <input type="checkbox"/> Psychological Eval | <input type="checkbox"/> Referral Source Notification |
| <input type="checkbox"/> Case Consultation | <input type="checkbox"/> Verbal Exchange | |
| <input type="checkbox"/> Other _____ | | |

Time Period Being Requested: From _____ To _____**Purpose and need for disclosure:**

- | | | |
|---|--|---|
| <input type="checkbox"/> Assessment/Evaluation | <input type="checkbox"/> Treatment/Goal Planning | <input type="checkbox"/> Determination of Benefits |
| <input type="checkbox"/> Legal Proceedings | <input type="checkbox"/> Continuity of Care | <input type="checkbox"/> Discharge/Aftercare Planning |
| <input type="checkbox"/> Coordination of Services | <input type="checkbox"/> Personal Use | |
| <input type="checkbox"/> Other _____ | | |

Important to know: This information may include privileged communication and/or documentation referencing the use of alcohol and/or other substances; serious communicable diseases/infections such as HIV, AIDS, Tuberculosis, Hepatitis B, and Venereal Disease.

- I understand I may stop this release at any time by written or verbal request to Northeast Michigan CMH Services. This would not include uses or disclosure already made with my permission.
- I understand that authorizing the disclosure of this information is voluntary and that my services will not be affected if I choose not to sign this form.
- I understand that any disclosure of this information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal or state confidentiality rules.
- I understand that substance abuse records are protected under Federal Regulations governing confidentiality of Alcohol and Drug Abuse Patient Records.
- I understand that HIV and AIDS identifying information are protected under Federal Regulations governing confidentiality of identifying information (PA 368)

This release ends _____ or one year from signing of this document or sixty days after my discharge from Northeast Michigan Community Mental Health Services.

Signature – Consumer or Person Authorized to Consent _____ Date _____

Name (Please Print) _____ Relationship, if not consumer _____

Witness _____ Date _____

This information has been disclosed to you from records protected by confidentiality rules (Federal Rule 45 CFR 164, Federal Rule 42 CFR Part 2 and Michigan Mental Health Code Rules 330.1748 and 330.1750). The Federal Rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. Any person receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the Information was obtained; and only with the agency(ies) and professional(s) listed here.

Mental Health Code

330.1748 Confidentiality.

- Sec. 748 (1) Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in this section.
- (2) If information made confidential by this section is disclosed, the identity of the individual to whom it pertains 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 disclosure was sought.
 - (3) An individual receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.
 - (4) For case record entries made subsequent to March 28, 1996, information made confidential by this section 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. The holder of the record shall comply with the adult recipient's request for disclosure as expeditiously as possible but in no event later than the earlier of 30 days after receipt of the request or, if the recipient is receiving treatment from the holder of the record, before the recipient is released from treatment.
 - (5) Except as otherwise provided in subsection (4), (6), (7), or (9), when requested, information made confidential by this section shall be disclosed only under 1 or more of the following circumstances:
 - (a) Pursuant to orders or subpoenas of a court of record, or subpoenas of the legislature, unless the information is made privileged by law.
 - (b) To a prosecuting attorney as necessary for the prosecuting attorney to participate in a proceeding governed by this act.
 - (c) To an attorney for the recipient, with the consent of the recipient, the recipient's guardian with authority to consent, or the parent with legal and physical custody of a minor recipient.
 - (d) If necessary in order to comply with another provision of law.
 - (e) To the department if the information is necessary in order for the department to discharge a responsibility placed upon it by law.
 - (f) To the office of the auditor general if the information is necessary for that office to discharge its constitutional responsibility.
 - (g) To a surviving spouse of the recipient or, if there is no surviving spouse, to the individual or individuals most closely related to the deceased recipient within the third degree of consanguinity as defined in civil law, for the purpose of applying for and receiving benefits.
 - (6) Except as otherwise provided in subsection (4), if consent is obtained from the recipient, the recipient's guardian with authority to consent, the parent with legal custody of a minor recipient, or the court-appointed personal representative or executor of the estate of a deceased recipient, information made confidential by this section may be disclosed to all of the following:
 - (a) Providers of mental health services to the recipient.
 - (b) The recipient or his or her guardian or the parent of a minor recipient or any other individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others.
 - (7) Information may be disclosed in the discretion of the holder of the record:
 - (a) As necessary in order for the recipient to apply for or receive benefits.
 - (b) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the individual 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.
 - (c) To providers of mental 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 recipient or other individuals.

Exhibit B

- (8) If required by federal law, the department or a community mental health services program or licensed facility shall grant a representative of the protection and advocacy system designated by the governor in compliance with section 931 access to all the records of all of the following:
- (a) A recipient, if the recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal and physical custody of the recipient has consented to the access.
 - (b) A recipient, including a recipient who has died or whose whereabouts are unknown, if all of the following apply:
 - (i) Because of mental or physical condition, the recipient is unable to consent to the access.
 - (ii) The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.
 - (iii) The protection and advocacy system 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.
 - (c) A recipient who has a guardian or other legal representative if all of the following apply:
 - (i) A complaint has been received by the protection and advocacy system or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
 - (ii) Upon receipt of the name and address of the recipient's legal representative, the protection and advocacy system has contacted the representative and offered assistance in resolving the situation.
 - (iii) The representative has failed or refused to act on behalf of the recipient.
- (9) The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, including the review function under section 143a(1), are confidential, shall be used only for the purposes of peer review, are not public records, and are not subject to court subpoena. This subsection does not prevent disclosure of individual case records pursuant to this section.
- (10) The holder of an individual's record, when 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.

History: 1974, Act 258, Eff. Aug. 6, 1975—Am. 1982, Act 236 Imd. Eff. Sept. 22, 1982—Am. 1986, Act 50, Imd. Eff. Mar. 17, 1986—Am. 1987, Act 192, Imd. Eff. Dec. 2, 1987—Am. 1990, Act 167, Imd. Eff. July 2, 1990—Am. 1995, Act 290, Eff. Mar. 28, 1996—Am. 1996, Act 588, Eff. Jan. 21, 1997

330.1748a

- (1) If there is a compelling need for mental health records or information to determine whether child abuse or child neglect has occurred or to take action to protect a minor where they may be substantial risk of harm, a family independence agency caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a mental health professional that a child abuse or neglect investigation has been initiated involving a person who has received services from the mental health professional and shall request in writing mental health records and information that are pertinent to that investigation. Upon receipt of this notification and request, the mental health professional shall review all mental health records and information in the mental health professional's possession to determine if there are mental health records or information that is pertinent to that investigation. Within 14 days after receipt of a request made under this subsection, the mental health professional shall release those pertinent mental health records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation.
- (2) The following privileges do not apply to mental health records or information to which access is given under this section:
- (a) The physician-patient privilege created in section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.
 - (b) The dentist-patient privilege created in section 16648 of the public health code, 1978 PA 368, MCL 333.16648.
 - (c) The licensed professional counselor-client and limited licensed counselor-client privilege created in section 18117 of the public health code, 1978 PA 368, MCL 333.18117.
 - (d) The psychologist-patient privilege created in section 18237 of the public health code, 1978 PA 368, MCL 333.18237.
 - (e) Any other health professional-patient privilege created or recognized by law.

Exhibit B

- (3) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an individual who in good faith gives access to mental health records or information under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.
- (4) A duty under this act relating to child abuse and neglect does not alter a duty imposed under another statute, including the child protection law, 1975 PA 238, MCL 722.621 to 722.638, regarding the reporting or investigation of child abuse or neglect.

330.1750 Privileged communications.

Sec. 750. (1) Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the patient has waived the privilege, except in the circumstances set forth in this section.

- (2) Privileged communications shall be disclosed upon request under 1 or more of the following circumstances:
 - (a) If the privileged communication is relevant to a physical or mental condition of the patient that the patient has introduced as an element of the patient's claim or defense in a civil or administrative case or proceeding or that, after the death of the patient, has been introduced as an element of the patient's claim or defense by a party to a civil or administrative case or proceeding.
 - (b) If the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the patient was informed that any communications could be used in the proceeding.
 - (c) If the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the patient or the patient's need for a guardian but only if the patient was informed that any communications made could be used in such a proceeding.
 - (d) In a civil action by or on behalf of the patient or a criminal action arising from the treatment of the patient against the mental health professional for malpractice.
 - (e) If the privileged communication was made during an examination ordered by a court, prior to which the patient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.
 - (f) If the privileged communication was made during treatment that the patient was ordered to undergo to render the patient competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the patient to stand trial.
- (3) In a proceeding with which subsections (1) and (2) prohibit disclosure of a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, the fact that the patient has been examined or treated or undergone a diagnosis also shall not be disclosed unless that fact is relevant to a determination by a health care insurer, health care corporation, nonprofit dental care corporation, or health maintenance organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.
- (4) Privileged communications may be disclosed under section 946 to comply with the duty set forth in that section.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1984, Act 362, Eff. Mar. 29, 1985;—Am. 1989, Act 123, Eff. Sept. 1, 1989;—Am. 1995, Act 290, Eff. Mar. 28, 1996.