COMMUNITY MENTAL HEALTH AUTHORITY

ADMINISTRATIVE POLICY AND PROCEDURES MANUAL				
Chapter **Program Quality**	**Section** **HIPAA**	**Chapter** **05**	**Section** **03**	**Subject** **12**
Subject **Review for Detriment**	**Authorization**		**Approved: 04/08/03** **Replaces: None**	

Updated: October 2024; Reviewed/No Update: October 2025

I. PURPOSE: To establish policy and procedure for reviewing for detriment prior to granting access to records.

II. APPLICATION: All programs governed by Gogebic Community Mental Health Authority (GCMHA).

III. DEFINITIONS: None

IV. POLICY: GCMHA shall allow a recipient access to his/her medical record to the extent it will not be detrimental to that recipient or another person.

V. PROCEDURE:

A. Request for Access: When the records department receives a request for access, it will be given to the authorized clinician who processes the request. If GCMHA does not maintain the PHI that is the subject of the recipient's request and GCMHA knows where the requested information is maintained, the recipient or legal representative must be informed where to direct their request for access.

B. Analysis of Recipient Status. An authorized clinician determines whether the recipient is a competent adult and entitled to receive his or her entire record under Mental Health Code Sec. 748(4) or the recipient is a legally incapacitated adult with a guardian or a minor and a determination of detriment may be made.

C. Review for Detriment Process.

1. If a review for detriment is appropriate then the authorized clinician in conjunction with his or her clinical supervisor will perform such review under the following guidelines.

a. Authorized clinician has determined in the exercise of professional judgment that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person.

b. The Protected Health Information (PHI) makes reference to another person and the authorized clinician has determined in the exercised professional judgment that the access requested is reasonably likely to cause substantial harm to such other person.

c. Request for access is made by the individual's personal representative and the authorized clinician in the exercise of professional judgment has determined

that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

2. In all cases a determination of detriment shall not be made if the benefit to the recipient from the disclosure outweighs the detriment.

D. Authorization by the Chief Executive Officer: The authorized clinician will send a written statement to the Chief Executive Officer outlining what information is to be withheld and why. The Chief Executive Officer will make the final determination.

E. Implementation and Process for Denial of Access: If GCMHA denies access in whole or in part, the following are required:
- **1.** To the extent possible, GCMHA must give the individual access to any other PHI requested after excluding the PHI which has been denied;
- **2.** A timely written denial must be provided to the recipient;
  - **a.** The denial must be in plain language and must state the basis for denial;
  - **b.** The denial must also contain a description of how the recipient may complain to the rights office and request a review of the denial from GCMHA.

F. Timeframes: If the record of the recipient is located at the site where the request is made, the determination of detriment will be made within 3 business days of the request for access. If the record of the recipient is located in another site, the determination of detriment will be made within 10 business days of the request for access.

G. Request for Review of Denial of Access.
- **1.** All requests for review of denial of access shall be forwarded to the privacy officer.
- **2.** The privacy officer will ensure that a licensed health care professional who is not directly involved in the denial will provide a second opinion of the denial of access.
- **3.** The licensed health care professional must determine within a reasonable period of time, not to exceed 10 business days, whether or not to uphold the denial of access.
- **4.** The licensed health care professional shall promptly inform the recipient of the decision in writing.

H. If the recipient is not satisfied with the final determination, he or she can file a complaint with the office of the recipient rights.

VI. REFERENCES AND LEGAL AUTHORITY: Act 258 of the Public Acts of 1974, as amended (Michigan Mental Health Code) Sections 748, 748 (a), and 750.; 45 CFR Part 164 section 524; MDHHS Disclosure of Confidential or Privileged Information APF 142

VII. EXHIBITS: None