# COMMUNITY MENTAL HEALTH AUTHORITY

| ADMINISTRATIVE POLICY AND PROCEDURES MANUAL | | | | |
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| **Chapter**<br>**Program Quality** | **Section**<br>**Recipient Rights** | **Chapter**<br>**05** | **Section**<br>**01** | **Subject**<br>**21** |
| **Subject**<br>**Confidentiality of Recipient Records/Release of Information** | **Authorization** | | **Approved: 08/28/18**<br>**Replaces: 04/27/04** | |

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

**I. PURPOSE:** To set forth the standards for confidentiality of recipient records and release of information.

**II. APPLICATION:** Recipient Rights

**III. DEFINITIONS:**

**A.** Closest Relative: The surviving spouse, or if there is no surviving spouse, the individual or individuals most closely related to the deceased recipient within the third degree of consanguinity as defined in civil law.

**B.** Confidential Information:

**1.** All information in the record of a recipient including, but not limited to:

**a)** Information acquired in diagnostic interviews or examinations;

**b)** Results and interpretations of tests ordered by a mental health professional or given by a facility;

**c)** Entries and progress notes by mental health professionals and supporting personnel;

**2.** All other information acquired in the course of providing mental health services to a recipient

**C.** Disclosure: Releasing confidential information outside Gogebic Community Mental Health Authority (GCMHA) and its contract agencies.

**D.** Holder of the Record: The Chief Executive Officer of GCMHA or other staff designated to perform job responsibilities related to disclosing confidential information.

**E.** Primary clinician: The staff member in charge of implementing the residents' plan of service.

**F.** Staff: Employees, volunteers, trainees, and contract employees.

**G.** ELMER: Electronic Medical Record

**IV. POLICY:** Information in the electronic medical 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 only in the circumstances and under the conditions set forth in P.A. 258 of

1974, as amended. There are additional protections for recipients with co-occurring mental health and substance use disorders; reference policy 05-01-33 (42 CFR Part 2).

**A.** Internal Confidentiality: Internal access to confidential information shall be limited to those staff who have a need to know that specific information to perform their assigned job duties. Access shall ordinarily be limited to staff providing services to the recipient, or staff performing approved peer review, professional consultation, investigation, supervision, or clinical records functions. No consent is required for internal access by authorized staff.

**B.** Disclosures - General Information

**1.** All disclosures shall be consistent with Sections 748 and 750 of the Mental Health Code and with agency standards.

**2.** Requests for confidential information shall be directed to clinical records staff; or to the Case Manager/Supports Coordinator in residential programs that maintain clinical records, for processing and documentation.

**3.** A request for information about a staff who has applied for, or is receiving, services shall be handled in accordance with Section 748 and agency standards.

**C.** Disclosures - Mandatory

**1.** Except as otherwise provided in this policy (ie sections 1. h., E. 1)., E. 5., or 1,) when requested, confidential information shall be disclosed only under 1 or more of the following circumstances:

**a)** Pursuant to valid 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 to the prosecuting attorney to participate in a proceeding governed by the Mental Health Code if it is either:
(1) Non-privileged information, or
(2) Privileged information disclosed pursuant to Section 750(2) including:
(a) Names of witnesses to acts which support the criteria for involuntary admission;
(b) Information relevant to alternatives to admission to a hospital or facility;
(c) Other information designated in GCMHA policies.

**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 Michigan Department of Health and Human Services (MDHHS) 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 closest relative of the recipient in order to apply for and receive benefits only

if spouse or closest relative has been designated the personal representative or has a court order;

**h)** Within 14 days of a written request from Michigan Department of Health and Human Services (MDHHS)/Child Protective Services (CPS) pertinent records and information are released, consistent with Section 748a of the Michigan Mental Health Code.

**i)** To an adult recipient if all of the following apply:
(1) A request has been received from the recipient;
(2) The recipient does not have a guardian and has not been adjudicated legally incompetent;
(3) The case entry was made after March 28, 1996.

**2.** 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 provided that the release of information is:

**a)** A mandatory disclosure listed above;

**b)** A request from the recipient's attorney even if the legally empowered guardian or the parent of a minor recipient has requested a delay;

**c)** A case record entry made after March 28, 1996 which is being 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.

**D.** Disclosures - Discretionary

**1.** If informed 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, confidential information may be disclosed to all of the following:

**a)** Providers of mental health services to the recipient;

**b)** The recipient, his or her guardian, 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. In this situation there may be a review by the director of the agency of a request for confidential information by a person or agency not covered. The director, once the decision has been made not to release information based on detriment, needs to determine if a part of the information requested may be released without detriment. The timeframe for the review and determination shall not exceed 3 business days if the record is on-site or 10 business days if record is off-site, the requestor may file a complaint with the agency's Office of Recipient Rights if he/she disagrees with the decision of the director.

**2.** To enhance treatment, recipients may be requested to authorize disclosure of information to family members, significant others, or other agencies providing services to the recipient. Such consent is voluntary.

**3.** To encourage opportunities for positive community integration, recipients in residential or day treatment programs may be requested to authorize disclosure of generic information. Such consent is voluntary and all such disclosures shall respect the privacy and dignity of the recipient.

4. When information is disclosed for clinical purposes and with appropriate consent, the holder of the record shall release a copy of the entire medical and clinical record to the provider of mental health services.
5. Information may be disclosed in the discretion of the holder of the record without recipient consent:
   a) As necessary in order for the recipient to apply for or receive benefits without the consent of the recipient or legally authorized representative only if the benefits shall accrue to the provider or shall be subject to collection for liability for mental health service;
   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 only if such identification is essential in order to achieve the purpose for which the information was 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.

**E.** Disclosures - Delays
1. If a request for a discretionary disclosure is delayed, the director of the agency shall review the request within 24 hours of receiving it. The timeframe for the review and determination shall not exceed 3 business days if record is on-site or 10 business days if record is off-site. Once the review is done and if the decision has been made not to release information based on detriment, a determination needs to be made if part of the information requested may be released without detriment. 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.
2. The holder of the record shall not decline to disclose information if a recipient or other empowered representative has consented, except for a substantial and documented reason.
3. If the supervisor declines to make a discretionary disclosure because of possible detriment to the recipient or others, there shall be a determination whether part of the information can be released without detriment. A determination of detriment shall not be made if the benefit of the disclosure to the recipient outweighs the detriment. 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.

**F.** Disclosures - Disability Rights Michigan: An identified representative of Disability Rights Michigan shall be granted access to records in accordance with Public Law 94-103, 89 Stat 486, Public Law 99-319, 100 Stat. 478, and Act 258 of the Public Acts of 1974, as amended. This includes:
1. 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;

2. A recipient, including a recipient who has died of whose whereabouts are unknown, if all of the following apply:
   **a)** Because of mental or physical condition, the recipient is unable to consent to the 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. If Disability Rights Michigan receives a complaint or has probable cause to suspect abuse, the following conditions must be met before Disability Rights Michigan may have access to records;
   **a)** Request must be put in writing;
   **b)** GCMHA must make determination, if in their professional judgement, it is reasonable to believe that the recipient is/has been subjected to abuse or neglect;
   **c)** GCMHA must limit the disclosure to the relevant information expressly authorized by statute or regulation;
   **d)** GCMHA must maintain documentation of all disclosures
4. A recipient who has a guardian or other legal guardian 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, 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 recipient.

**G.** Disclosures Protective Services
1. Staff shall report suspected abuse or neglect to Protective Services in accordance with Act 238 of the Public Acts of 1975 and Act 519 of the Public Acts of 1982.
2. An identified representative from Protective Services shall be granted access to the clinical record of a person who is suspected of being abused, if it is necessary to carry out that agency's investigation, regardless of the origin of the reported violation.

**H.** Peer Review: The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, including reviewing the quality and appropriateness of services, shall be used only for peer review, are not public records, and are not subject to court subpoena.

**I.** Statement Correcting or Amending Information: A recipient, guardian, or parent of a minor recipient, after having gained access to treatment records in accordance with agency procedures, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record and shall be allowed to insert

a statement into the record correcting or amending the information at issue without changing the original documentation. That statement shall become part of the record.

**J.** Providing Information to Attorneys Other Than Prosecuting Attorneys.

**1.** An attorney who is retained or appointed by a court to represent a recipient and who presents identification and a valid consent or release executed by the recipient, by a legally empowered guardian, or by the parents of a minor shall be permitted to review at GCMHA, the recipient's record. An 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 minor's record;

**2.** If there is not a valid consent or release, an attorney who does not represent a recipient shall not be allowed to review records, unless the attorney presents a certified copy of a court order directing disclosure of information concerning the recipient to the attorney;

**3.** An attorney shall be refused written or telephoned requests for information, unless the request is accompanied or preceded by a certified copy of an order from a court ordering disclosure of information to that attorney or unless a valid consent or release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copes of recipient records.

**K.** Providing Information to Private Physicians or Psychologists Appointed or Retained to Testify in Civil Criminal or Administrative Proceedings.

**1.** A physician or psychologist who presents identification and a certified true copy of a court order appointing the physician or psychologist to examine a recipient for the purpose of diagnosing the recipient's present condition shall be permitted to review, at GCMHA, a record containing information concerning the recipient. Physicians or psychologists shall be notified before the review of records when the records contain privileged communication which cannot be disclosed in court under Section 750; unless disclosure is permitted because of an express waiver of privilege or because of other conditions that, by law permit or require disclosure.

**2.** 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 which, by law, permit or require disclosure.

**L.** Providing Information to a Prosecuting Attorney: A prosecutor may be given non-privileged information or privileged information which may be disclosed pursuant to Section 750 of the Mental Health Code if it contains:

**1.** Information relating to the names of witnesses to acts which support the criteria for involuntary admission;

**2.** Information relevant to alternatives to admission to a hospital or facility;

**3.** Other information designated in GCMHA policies.

## V. PROCEDURE:

**A.** Summary of Section 748: This shall be in all electronic medical records under the section Legal/Court Orders/Releases – Summary of Section 748 of the Mental Health Code.

**B.** Disclosures

**1.** The disclosure of physical Clinical records to outside agencies or individuals shall be made only by authorized medical records staff. The identity of the individual and any other information shall not be disclosed unless it is essential to the purpose.

**2.** Clinical records staff will keep a record of all disclosures in ELMER which includes:

**a)** Information released;
**b)** To whom it is released;
**c)** How the information is to be transmitted;
**d)** When the information is to be transmitted
**e)** The purpose stated by the person requesting the information;
**f)** A statement indicating how the disclosed information is germane to the stated purpose;
**g)** The subsection of Section 748 of the Mental Health Code, or other applicable law, under which a disclosure was made;
**h)** A statement stamped on the information that the individual receiving confidential information shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained and in accordance with Section 748.

**3.** When information is to be disclosed without identifying the name of the recipient, clinical records staff will block out the recipient's name.

**4.** Clinical records staff will safeguard confidential information against unwarranted identification, including inspecting or sampling of information.

**5.** When disclosure is appropriate, clinical records staff will provide copies to authorized receivers stamped with the nondisclosure information.

**6.** When information is being requested for outside research, evaluation, accreditation, or statistical compilation, the primary clinician will determine whether such disclosure is appropriate for that recipient and will determine whether the recipient's identity may be disclosed.

**7.** The primary clinician will determine when identification would be harmful to a recipient.

## VI. REFERENCES AND LEGAL AUTHORITY:

Act 258 of the Public Acts of 1974, as amended (Mental Health Code) Sections 748, 749, 750, 931; Act 238 of the Public Acts of 1975, as amended (Child Protection Law); Act 5 19 of the Public Acts of 1982, as amended (Adult Protection Law); Public Law 94-103, 89 Stat. 486; Public Law 99-319, 100 Stat. 478; Michigan Attorney General Opinion 6700

## VII. EXHIBITS:

None