COMMUNITY MENTAL HEALTH AUTHORITY

ADMINISTRATIVE POLICY AND PROCEDURES MANUAL				
Chapter **Program Quality**	**Section** **Recipient Rights**	**Chapter** **05**	**Section** **01**	**Subject** **33**
Subject **42 C.F.R. Part 2**	**Authorization**		**Approved: 09/30/14** **Replaces: 05/27/08**	

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

I. PURPOSE: To establish a policy regarding confidentiality of substance abuse treatment records and disclosure of information according to applicable laws. For the purpose of this policy, reference can be made to the 2012 Edition of Confidentiality and Communication, A Guide to the Federal Drug and Alcohol Confidentiality Law and HIPAA by the Legal Action Center. The information below contains excerpts from this manual. More detail is available in the manual.

II. APPLICATION: All Gogebic Community Mental Health Authority (GCMHA) employees, volunteers, student interns, Peer Support Specialists, and persons under contract with GCMHA.

III. DEFINITIONS:

Both HIPAA and 42 C.F.R. Part 2 protect recipient identifying information. Under 42 C.F.R. Part 2 this is information that would identify them as someone who has received alcohol or drug treatment services, either directly or indirectly. This includes any information, whether oral or written that would directly or indirectly reveal a person's status as a current or former recipient. Records protected from unauthorized disclosure include any information acquired about a recipient – including identity, address, medical or treatment information, and all communications made to program staff – whether it is in writing or is recorded in some other form.

42 C.F.R. Part 2 protects "recipients" who have applied for, participated in, or received an interview, counseling, or any other service from a federally assisted or drug abuse program, including someone who, after arrest on a criminal charge, is identified as an alcohol or drug patient during an evaluation of eligibility for treatment.

HIPAA protects any health information that identifies an individual, while 42 C.F.R. Part 2 only protects information that identifies an individual as being a patient in a drug or alcohol abuse program receiving co-occurring services. It is possible for some information, i.e., that which does not include drug/alcohol information, to only be protected by HIPAA and not by 42 C.F.R. Part 2.

ELMER – Electronic Medical Record

HIV – Human Immunodeficiency Virus

ARC – Aids Related Complex

AIDS – Acquired Immunodeficiency Syndrome

IV. POLICY: Recipient's substance abuse treatment records are included in GCMHA's electronic medical record. GCMHA will protect information that may identify the recipient as someone receiving treatment for co-occurring mental health and substance use disorders.

PHILOSOPHY: It is the mission of GCMHA to *"Enhance the quality of life for our community by offering comprehensive behavioral health services in a trauma-informed culture of care, promoting person-centered planning, integrated healthcare, recovery, and community inclusion*." GCMHA recognizes that people with co-occurring mental health and substance use disorders face a variety of challenges and that the key to providing effective treatment to these individuals is "the seamless integration of psychiatric and substance abuse interventions in order to form a cohesive, unitary system of care" (Drake et. al. 2003). Therefore, GCMHA is dedicated to providing a range of services including screening, assessment, treatment, linking and coordinating of services, reassessment and follow-up to recipients diagnosed with co-occurring disorders. These co-occurring services are provided to recipients by all of the members of their treatment team and are based upon recipient need. GCMHA also recognizes that recipients faced with co-occurring disorders have expectations of the privacy of their records. In order to address this concern, GCMHA and its staff adhere to the confidentiality protections afforded to recipients with substance use disorders as specified in the Code of Federal Regulations Title 42: Public Health, Part 2 Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. Part 2).

GCMHA will comply with all regional provisions pertaining to 42 C.F.R Part 2 as directed by NorthCare policies.

V. PROCEDURE:

Standards

Internal Confidentiality. Internal access to confidential information shall be limited to those staff that 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, supervisory, or clinical records functions.

1. Recipients receiving substance abuse services must have Release of Information form(s) completed which is 42 C.F.R. Part 2 compliant. All previous releases are no longer valid.

2. Most disclosures are permissible if a patient has signed a valid 42 C.F.R. Part 2 consent form which has not expired or been revoked by the recipient. If authorized by consent, a disclosure is allowed even if it may not be in the recipient's best interests.

3. The recipient may revoke consent at any time. 42 C.F.R. Part 2 is silent on the issue of whether the revocation can be oral or must be in writing. As a result, drug and alcohol programs honor oral revocation, which may be indicated on the release as "revoked by recipient" and the date revoked. This will be scanned into ELMER.

4. Under 42 C.F.R. Part 2,

a) The program must <u>always</u> obtain a minor's consent for disclosures and cannot rely on the parent's signature. The requirement for parental consent for disclosure is

determined by the legal requirement for parental consent for treatment. If parental consent for treatment is required by state law, it is required for disclosure of any information under 42 CFR Part 2.; and

b) Parental consent for disclosure to a third party is required in addition to the minor's only if the program is required by state law to obtain parental permission before providing treatment to a minor. In other words, if parental consent was not required to treat the minor, then parental consent is not required to make disclosures. If it is required, the consent of both the minor recipient and the parent or guardian is required to make disclosures.

5. Adolescents (14-18 years old): Typically, parents consent to treatment for their child to receive mental health services. This is ***not*** the case for adolescents receiving substance abuse treatment. It is recommended that at the onset of mental health services, the adolescent sign releases and consents which are 42 C.F.R. compliant. Otherwise, if the child becomes a participant in co-occurring treatment, the parental consent and releases will no longer be effective.

6. Any disclosure made with written recipient consent must be accompanied by a written statement that the information is protected by federal law and that the recipient cannot make any further disclosure unless permitted by regulations. Redisclosure is not allowed unless the recipient requests it and signs a valid authorization.

7. Disclosures may be permitted when a recipient has a medical condition that poses an immediate threat to the health of an individual or requires immediate medical intervention. In this situation, information may only be disclosed to medical personnel, not family members or "emergency contacts".

8. Under 42 C.F.R. Part 2, a subpoena, search warrant, or arrest warrant, even when it is signed by a judge and labeled a court order, is <u>not</u> sufficient, when standing alone, to require or even permit a program to make a disclosure. If confronted with a subpoena or court order directing the program to produce patient records or testimony about a recipient, it is best to seek the advice of legal counsel.

9. Michigan has a duty to warn. This can be done without violation by either obtaining a court order, anonymously or a non-patient identifying report (and must not implicate substance abuse treatment).

10. If there is suspected Child Abuse and Neglect, the program must comply with State mandatory reporting laws per the following (and must not implicate substance abuse treatment):

a) Make an initial report to the state's child abuse hotline.
b) Provide written confirmation, if required.
c) Provide nothing more in follow-up investigation, unless provided with patient's written consent or a valid court order.

<u>Procedures</u>

A. A simple screening tool will be used to determine the need for further assessment of substance abuse/co-occurring status. This tool will be implemented within the

biopsychosocial assessment, both at intake and ongoing in case substance abuse is discovered during the course of treatment.

B. When indicated by the simple screening, a comprehensive assessment of substance issues will be completed.

C. A Substance Abuse Disability Designation field (17.03) is included in the ELMER record.

D. Any recipient record covered under 42 CFR Part 2 is clearly and boldly indicated in the header that appears on every screen in the ELMER record.

E. A Release of Information Form must comply with 42 C.F.R. Part 2.

F. A recipient has the right to revoke consent (written/oral). Medical Records staff will:
1. Print a copy of the signed release from the ELMER record.
2. Stamp "Revoked by Recipient" (a stamp will be available at each service site); staff member will initial and date.
3. Provide copy to the recipient, if indicated.
4. Scan revoked consent back into recipient record and delete the original signed consent.
5. Inform appropriate staff.

G. At Intake, clinical staff will address guidelines for 14 - 17 year old minors:
1. Consent for services and releases signed by both minor and parent.
2. Minor signs releases to parents.
3. Minor's right to revoke releases: Explain to the parents that at some point in the future, if there is not a release from the child, GCMHA may not be able to communicate with them anymore about the child's treatment.

VI. REFERENCES AND LEGAL AUTHORITY: 42 C.F.R. Part 2; Confidentiality and Communication: A Guide to the Federal Drug & Alcohol Confidentiality Law and HIPAA, 6th Ed, New York, NY: Legal Action Center, 2012; cl.116sa -Authorization for Release of Information, 42 C.F.R. Part 2; 17.03 Substance Abuse Disorder/SUD – Disability Designation

VII. EXHIBITS: None