



## SHIAWASSEE HEALTH AND WELLNESS POLICY MANUAL

<b>Title:</b>	Confidentiality and Disclosure
<b>Section:</b>	Recipient Rights
<b>Policy Number:</b>	6
<b>Issued By:</b>	Recipient Rights Director
<b>Approved by:</b> Governance Committee	<b>Effective Date:</b> 10/27/97 <b>Last Revision:</b> 1/18/21 <b>Last Review:</b> 01/18/21
<b>Approved Date:</b> 03/26/18	<b>Annual Policy Statement Review:</b> 12/28/20

### POLICY STATEMENT:

It shall be the policy of Shiawassee Health and Wellness (SHW) that information in the record of a recipient and information gained while providing mental health services to a recipient, is kept confidential and the information shall not be made open to public inspection.

### PURPOSE:

To ensure that all recipient information is kept confidential and that if information is disclosed outside of the Agency or contracted provider, whichever is the holder of the record, the disclosure will occur in the circumstances and under conditions established under Public Act 258 of 1974, as amended.

### APPLICATION:

All Shiawassee Health and Wellness Employees, Contract Providers and employees, Volunteers, and Interns.

### DEFINITIONS:

Confidential Information: Information in the record of a recipient and other information acquired in the course of providing mental health services, unless the information is privileged. [MCL 330.1748(1) and (4); MSA 14.800(748) (1) and (2)]

Department: the Department of Health and Human Services. [MCL 330. 1100a(21)]

Disclosure of Information of Documents: To provide a copy of the document, to allow review of the document, or to provide a verbal or written description or summary of the document or information.

Documents: Includes all writings, drawings, graphs, charts, photographs, medical records, information, and other data compilations from which information is obtained (e.g., computerized records). [MCR 2.310(2)]

Executive Director: the individual appointed under Mental Health Code Section 226 to direct a community mental health services program or his or her designee. [MCL 330.1100a(30)]

Peer Review: A process, including the review process required under section 143a, in which mental health professionals of a state facility, licensed hospital, or community mental health services program evaluate the clinical competence of staff and the quality and appropriateness of care provided. Peer review evaluations are confidential in accordance with section 748(9) and are based on criteria established by the facility or community mental health services program itself, the accepted standards of the mental health professions, and the department. [MCL 330.1100c(2)].

Privileged Communication: communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to another person while the other person is participating in the examination, diagnosis, or treatment or a communication made privileged under other applicable state or federal law.

Recipient: an individual who is receiving mental health services from the department, a community mental health services program, or a facility or from a provider that is under contract with the department or community mental health services program. This does not include an individual receiving substance use disorder services under Chapter 2A of the Mental Health Code unless that recipient is also receiving mental health services in conjunction with substance use disorder services.

Release: A written document which authorizes the disclosure of information, documents and/or medical records. It may authorize the dissemination, inspection, and/or copying of the information, documents, and/or medical records in the possession or control of the agency.

Treatment: The care, diagnosis, and therapeutic services, including the administration of drugs, and any other services for the treatment of an individual. [MCL 330.1100d(17)]

## **STANDARDS:**

- A. All information in the record of a recipient is confidential. The record shall include all of the following information:
  - 1. Information acquired in diagnostic interviews or examinations.
  - 2. Results and interpretations of tests ordered by a mental health professional or given by a facility.
  - 3. Entries and progress notes by mental health professionals and supporting personnel.
- B. Confidentiality applies to internal access, within SHW or within the contracted provider, and external access, between SHW and a provider contracted with SHW. Information shared will be limited to those staff having a need to know the specific information being shared in order for them to perform their assigned job.

- C. A summary of section 748 of the Mental Health Code shall be made a part of each recipient file.

**PROCEDURES:**

All disclosures of recipient information will be consistent with Sections 748 and 750 of the Mental Health Code, Administrative Rule 330.7051, and SHW policies.

A. Required Disclosures:

1. When requested, the agency as holder of the record shall disclose confidential information only under one or more of the following provisions:
  - i. Pursuant to an order or a subpoena of a court of record or a subpoena of the legislature, unless the information is privileged.
  - ii. To a prosecuting attorney as necessary for that attorney to participate in a proceeding pursuant to the act, if
    - The information is non-privileged, or;
    - Privileged information may be disclosed under Section 750(2) if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission, information relevant to alternatives to hospital or facility admission, and other information designated in SHW policies.
  - iii. To a recipient's attorney with the recipient's consent or the consent of the recipient's guardian with authority to consent, or with the consent of the minor recipient's parent with legal and physical custody.
  - iv. To the auditor general if the information is necessary for that office to discharge its constitutional responsibility.
  - v. When necessary to comply with another provision of law.
  - vi. To Michigan Department of Health and Human Services when necessary in order for the department (DHHS) to discharge a responsibility placed upon it by law.
  - vii. To a surviving spouse, or if none, to the closest relative of the recipient, within the third degree of consanguinity as defined by civil law, in order to apply for and receive benefits, but only if the spouse or personal representative has a court order.
  - viii. To an adult recipient upon the adult recipient's request, if the recipient does not have a guardian and has not be adjudicated legally incompetent, and if the case record entries were made after March 28, 1996.

-Disclosure will occur as expeditiously as possible but in no event later than the earlier of 30 days after receipt of the request, or in cases when the recipient is receiving treatment from the holder of the record, before the recipient is released from treatment.

B. Elective/ Optional Disclosures:

1. Except as otherwise provided in MHC 1748(4), if consent is obtained from the recipient, the recipient's guardian with authority to consent, a parent with legal custody of a minor recipient, or a court appointed personal representative or executor of the estate of a deceased recipient, confidential information may be disclosed to:
  - i. A provider of mental health services to the recipient;
  - ii. To the recipient or his or her guardian, parent of a minor recipient, or another individual or agency unless in the written judgement of the holder of the record, the disclosure would be detrimental to the recipient or others
2. To enhance treatment, recipients may be requested to authorize the disclosure of information to family members, significant others, or other agencies providing services, such consent is voluntary.
3. When authorized to release information for a clinical purpose(s) by the individual recipient or the recipient's guardian or a parent of a minor, SHW shall release a copy of the entire medical and clinical record to the provider of mental health services.
4. The holder of the record may disclose information without consent:
  - i. As necessary in order for the recipient to apply for or receive benefits, if the benefits accrue to the provider or are subject for collection for liability for mental health services, without consent of the recipient or the recipient's legally authorized representative.
  - ii. As necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the health insurance portability act.
  - iii. When necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation. The individual who is the subject of the information shall not be identified in the disclosed information unless such disclosure is essential to achieving the purpose for which the information was sought, or if preventing the identification would clearly be impractical, but not if the subject of the information were likely to be harmed by identification.
  - iv. To a provider of mental or other health services or a public agency, if there is compelling need for the disclosure based upon a substantial probability of harm to the recipient or other individuals.
  - v. To a Department of Health and Human Services caseworker or directly involved administrator when the caseworker or administrator notifies the 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. The DHHS caseworker or administrator will provide a written request for information and mental health records that are pertinent to that investigation.

- a. Upon receipt of this notification, 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 are pertinent to that investigation. The mental health professional shall release those pertinent mental health records and information to the caseworker or administrator who is directly involved in the child abuse or neglect investigation within 14 days.

#### C. Detriment:

1. Unless section 748(4) of the act applies, if a request for confidential information has been made by an individual or outside entity, the agency as holder of a record may make a determination of detriment if the Chief Executive Officer or designee determines that the disclosure would be detrimental to the recipient or others.
2. The Chief Executive Officer shall review the request and shall make a determination within three (3) business days of the request whether the disclosure would be detrimental, unless the record of the recipient is located at another location. In this instance determination will be made within ten (10) business days of the request.
3. If the agency declines to disclose 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.
4. The Chief Executive Officer shall provide written notification of the determination of detriment and justification for the determination to the person requesting the information.
5. If the person seeking the disclosure disagrees with the denial to disclose, he/she may file a recipient rights complaint to the Recipient Rights Office having jurisdiction.

#### D. Information shall be provided to attorneys, other than prosecuting attorneys, as follows:

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 parent of a minor shall be permitted to review, on the provider's premises, 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 records.

2. Absent 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 an order from a court 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 consent for release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records.

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

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, on the provider's premises, a record containing information concerning the recipient. Physicians or psychologists shall be notified before the review of records when the records contain privileged communication that cannot be disclosed in court under section 330.1750(1) of the act.
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.

F. If required by federal law, SHW shall grant a representative of Disability Rights Michigan access to the records of all of the following:

1. A recipient, if the recipient, the recipient's guardian, 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 or whose whereabouts is unknown, if all 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. 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 and neglect.

2. A recipient with a guardian or other legal representative if all the following apply:
  - i. 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;
  - ii. Upon receipt of the name and address of the recipient's legal representative, Disability Rights Michigan 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.

G. Peer Review:

1. 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) of the Mental Health Code, are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena.

H. Duty to Warn:

1. If a recipient communicates to a mental health professional who is treating the recipient, a threat of physical violence against a reasonably identifiable third party and the recipient 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 prescribed in subsection (2) MHC 330.1946:
2. The staff person with knowledge will immediately consult with his or her supervisor or director, and based on these recommendations will discharge the Duty to Warn by:
  - i. Hospitalizing the recipient or initiating proceedings to hospitalize the recipient under chapter 4 or 4a of the Mental Health Code; OR
  - ii. Making a reasonable attempt to communicate the threat to the third person and communicating the threat to the local police department, county sheriff for the area where the third person lives, or the area where the recipient lives, or to the Michigan State Police;
  - iii. If the staff person has reason to believe that the third person who is threatened is a minor or is incompetent by reason other than age, the staff person, in addition to the steps set forth in (b) above, will communicate the threat to the Department of Health and Human Services, Child Protective Services, and the third person's custodial parent, non-custodial parent, or legal guardian whoever is appropriate in the best interest of the third person.

3. Documentation of the steps taken will be entered into the recipient's record.

- I. A recipient, guardian, or a parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of the factual information in the recipient's record, and the recipient or empowered representative may insert into the record a statement correcting the information at issue with such statement becoming part of the record. The recipient or empowered representative shall be informed of this right.

J. A record shall be kept of disclosures and shall include all of the following information:

1. Information released.

- i. To whom it is released.
- ii. The purpose claimed by the person requesting the information and a statement disclosing how the disclosed information is germane to the purpose.
- iii. The subsection of section 748 of the Mental Health Code, or other state law, under which the disclosure is made.
- iv. A statement indicating that the person receiving the disclosed information is informed that further disclosure shall be consistent with the authorized purpose for which it was released.

**Change Log:**

<b>Date of Change</b>	<b>Description of Change</b>	<b>Responsible Party</b>
01/21/18	Name Change, Format Change	Executive Assistant
03/09/18	Combined with Duty to Warn policy	Andrea Andrykovich, Recipient Rights Director
03/26/18	Approved by the Governance Committee (due to Rights Committee changing to twice per year).	
07/06/18	Format Change, no change to content	Executive Assistant
5/1/19	Format Change, no change to content	Andrea Andrykovich
12/28/20	Policy Statement review by Governance Committee of the Board due to no quorum at RRAC meeting on 12/08/2020	J. Semans
1/18/21	Title Change MP&A to Disability Rights Michigan, no need to go through approval process	Andrea Andrykovich