



## CMHA-CEI Policies and Procedure Manual

<b>Title:</b>	3.3.10, Confidentiality and Privileged Communication		
<b>Subject:</b>	Consumer Treatment, Training, and Living		
<b>Section:</b>	Clinical		
<b>Related Policies:</b>	3.3.10, Confidentiality and Privileged Communication		
<b>Policy:</b> <input type="checkbox"/>	<b>Issued by:</b>	<b>Effective Date:</b>	<b>Applies to:</b>
<b>Procedure:</b> X	QCSRR Director	4/12/84	X All CMHA-CEI staff
<b>Page:</b> 1 of 16	<b>Approved by:</b>	<b>Review Date:</b>	X Contract Providers
	N/A	1/27/17	<input type="checkbox"/> Other:

- I. **Purpose:** To establish guidelines regarding the protection and disclosure of confidential information and privileged communications.
- II. **Procedures:**
  - A. If there are any questions or concerns about confidentiality or disclosure of information, contact CEI's Compliance Officer.
  - B. All information in the record of a consumer and other information acquired in the course of providing services shall be kept confidential and shall not be open to public inspection.
  - C. **Responding to Subpoenas:**
    1. All requests, subpoenas, and court orders for confidential information shall be immediately forwarded to the records department/designee. (Some departments may have a designee that handles subpoenas, if you are unsure, contact the supervisor.)
    2. The records department/designee shall process all requests, subpoenas, and court orders for confidential information according to standards established by the records department.
    3. The records department/designee shall accept subpoenas from a record copy service, but the return of the requested information shall be made directly to the authorized receiver as identified either by the subpoena or by a valid authorization.
  - D. **Disclosures of Information:**
    1. If confidential information 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. When practicable, no other information shall be disclosed unless it is germane to the authorized purpose of the disclosure.
    2. Authorization, prior to disclosure of confidential information, must be obtained from
      - a) An adult, competent, recipient.
      - b) A court-appointed guardian of a recipient. Documentation of the appointment is to be included in the recipient's record.
      - c) A parent of a minor recipient. If the parents are divorced, the parent with legal custody. If divorced parents have joint legal custody, either parent, unless custody papers specify otherwise.
      - d) A minor recipient, 14 years of age or older who requested service without parental consent.
      - e) An emancipated minor.
      - f) A married minor who is a parent, regarding disclosure of confidential

information concerning his/her minor child or children.

g) Probate Court, if the recipient is a ward of the court.

h) The court-appointed personal representative or executor of the estate of a deceased recipient.

3. Information in the record pertaining to individuals other than the recipient shall not be disclosed without authorization of those individuals. A release form from the parent or guardian specifying the recipient's name does not permit disclosure of information regarding any other member of the family, unless the release form specifically includes the other family members and is signed by those family members.

4. Each disclosure of confidential information shall be accompanied by a written prohibition on re-disclosure:

a) Substance abuse - "This information has been disclosed to you from records protected by Federal Confidentiality rules (42 CFR Part 2). The Federal rules prohibit 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. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse consumer."

b) Mental Health - "This document is confidential, and protected by PA 258 of 1974, as amended, Michigan's Mental Health Code. It is provided in accordance with signed authorization. An individual receiving this information shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained."

5. A record of each disclosure shall be maintained in the consumer's case record. Documentation shall include all of the following:

a) The information released.

b) To whom the information was released.

c) The purpose claimed by the person requesting the information and a statement describing how the disclosed information is germane to that purpose.

d) The subsection of the Mental Health Code, Federal Register, or other law, under which disclosure was made.

6. Telephone inquiries without appropriate Consent To Share shall not be honored. Staff shall indicate that they can neither confirm nor deny that an individual is receiving services. Staff may receive information the caller is offering, but may not share or exchange information. Callers shall be instructed to submit requests for information in writing along with proper authorization.

7. Disclosure of information via electronic transfer:

a) Requests for release of information may be accepted via electronic transfer.

b) See procedure 1.5.01E about sending information "secure" through email.

c) Staff sending confidential information via electronic transfer shall take steps to protect the material, including double checking the accuracy of the receiver's facsimile (fax) number or e-mail address.

8. Staff sending confidential information shall be responsible for the material being sent correctly, and accountable for misdirected material. If it is determined that

information was disclosed in error, staff shall notify the compliance officer of the error.

E. **Consent Forms** - CEI utilizes three different forms when obtaining consent. Please refer to the [Consent to Share folder](#) on the intranet located under Clinical Forms and Program Information.

1. Consent to Share Behavioral Health Information for Care coordination purposes Form is to be used for coordination of care between other providers (PCP, hospitals, healthcare offices, etc) or organizations (schools, DHHS, etc.)
2. Authorization to Release of Information form will be used for release information from the consumer's record to the consumer, family member, attorney, parole officer, etc.
3. Internal Request to Send Information form is solely for internal CEI use. To be completed by CEI staff and submitted to CEI Records Staff only.
4. A consent form to be valid must include, at the least, the following elements:
  - a) The specific name or general designation of the program or person permitted to make the disclosure.
  - b) The name or title of the individual or the name of the organization to which disclosure is to be made.
  - c) The name of the consumer
  - d) The purpose of the disclosure.
  - e) How much and what kind of information is to be disclosed.
  - f) The signature of the consumer and, when required for a consumer who is a minor, the signature of a person authorized to give consent under § 2.14; or, when required for a consumer who is incompetent or deceased, the signature of a person authorized to sign under § 2.15 in lieu of the consumer.
  - g) The date on which the consent is signed.
  - h) A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.
  - i) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.
5. Authorization to release information is invalid, and confidential information shall not be disclosed if:
  - a) The authorization has expired, or
  - b) The authorization fails to conform to any of the required elements of the form of written consent. (E.4. a-i above), or
  - c) The authorization is known to be false.
6. A copy of the signed form shall be filed in the clinical record.
7. Specific information in the records, or summaries of records obtained from other agencies through a release of information, shall become part of the mental health record and shall be released as appropriate.

F. **Mental Health Records:** Disclosure with the consent of an adult, competent recipient, the parent with legal custody of a minor recipient, or an empowered guardian, or the court appointed personal representative or executor of the estate of a deceased recipient must adhere to

the following standards:

1. For case record entries made after March 28, 1996, confidential information shall be disclosed to an adult, competent recipient, upon the recipient's request. Disclosure to the recipient shall be made as soon as possible, but no later than the earlier of 30 days after receipt of the request or, if the recipient is currently receiving treatment, before the recipient is discharged.
2. For case records made prior to March 28, 1996, information may be withheld from disclosure to the adult, competent recipient if the disclosure is judged, by the holder of the record, to be detrimental to the recipient or others. Such judgment shall be documented in writing.
3. Information shall be disclosed to a recipient's attorney with the consent of the adult, competent, recipient, the parent of a minor recipient, or the empowered guardian.
4. Information may be disclosed, with consent, to:
  - a) Providers of mental health services to the recipient. A copy of the entire medical and clinical record shall be released, when requested.
  - b) The recipient empowered guardian, parent of a minor, or any other individual or agency. A recipient, empowered guardian, or parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record. The recipient, empowered guardian, or parent of a minor recipient shall be allowed to insert into the record a written statement correcting or amending the information at issue. The written statement shall become part of the record.
  - c) To an attorney or court, pursuant to a subpoena of a court of record or an attorney (other than a prosecuting attorney—F.6.b.).
    - (1) A subpoena duces tecum (record subpoena) requesting client records must be accompanied by a valid authorization signed by the recipient, parent of a minor, or empowered guardian, to release the information.
    - (2) An authorization will not accompany a subpoena ad testificandum (subpoena to testify). The subpoenaed person must appear at the designated place and time, and assert the confidential or privileged nature of the information. The recipient may then authorize the disclosure or waive the privilege on the record. If the recipient does not waive confidentiality/privilege, the subpoenaed person may not disclose information unless ordered by the court to do so.
    - (3) An attorney (other than a prosecuting attorney) shall be refused written or telephoned requests for information, unless
      - (a) The request is accompanied or preceded by a certified copy of an order from a court ordering disclosure of information to that attorney, or
      - (b) A consent or release has been properly executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records.
    - (4) An attorney who is retained or appointed by a court to represent a recipient and who presents identification and a consent or release executed by the recipient, empowered guardian, or parents of a minor shall be permitted to review, on the premises of CMH or the Network

service provider, a record containing information concerning the recipient. 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.

5. Within the constraints detailed above (in IIF1), information may be withheld from disclosure if there is a written judgment by the holder of the record that the disclosure would be detrimental to the recipient or others.
  - a) The Program Director, or designee, may make a determination that disclosure of information may be detrimental to the recipient or others, and may decline to disclose it. If so, a determination shall be made as to whether part of the information may be released without detriment.
  - b) A determination of detriment shall not be made if the benefit to the recipient from the disclosure outweighs the detriment.
  - c) The determination of detriment shall be made
    - (1) Within 3 business days of the request if the record is located at the recipient's residence.
    - (2) Within 10 business days of the request if the record is located any place other than the recipient's residence.
  - d) The program director, or designee, shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information.
  - e) If the person requesting the information disagrees with the decision not to release the information, he or she may file a recipient rights complaint with the CMH Office of Recipient Rights.
6. Mandatory disclosure--WITHOUT CONSENT: When requested, information shall be disclosed without client consent:
  - a) On receipt of an order or subpoena of a court of record, or subpoena of the legislature, unless the information is made privileged by law.
  - b) To a prosecuting attorney as necessary for him/her to participate in a proceeding governed by the Mental Health Code (e.g.: civil commitment process). A prosecutor may be given non-privileged information or privileged information that may be disclosed in accordance with section 750(2) of the Mental Health Code, if it contains information relating to participation in proceedings under the Mental Health Code, including all of the following information:
    - (1) Names of witnesses to acts that support the criteria for involuntary admission.
    - (2) Information relevant to alternatives to admission to a hospital or facility.
  - c) When necessary in order to comply with a provision of law (e.g., mandatory reporting of abuse, mandatory reporting of contagious diseases, duty to warn).
  - d) To the Michigan Department of Health and Human Services (DHHS). 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 there may be a substantial risk of harm, a DHHS 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.

- (1) 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.
- (2) Within 14 days after receipt of the request from DHHS, the mental health professional shall notify the records department/designee to release those pertinent mental health records and information to the DHS caseworker or administrator directly involved in the child abuse or neglect investigation.
- (3) The following privileges do not apply to mental health records or information to which access is given in this circumstance:
  - (a) The physician-consumer privilege created in section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.
  - (b) The dentist-consumer 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-consumer privilege created in section 18237 of the public health code, 1978 PA 368, MCL 333.18237.
  - (e) Any other health professional-consumer privilege created or recognized by law.
- (4) 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 of the Mental Health Code is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.
- (5) A duty under the Mental Health Code 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.
- e) To the Michigan Department of Health and Human Services (DHHS) when the information is necessary in order for DHHS to discharge a responsibility placed upon it by law (e.g.: compilation of statistical information).
- f) To the office of the state auditor general when that information is necessary for that office to discharge a constitutional responsibility (e.g., financial audit).
- g) To a surviving spouse, or if none, to the closest relative of the recipient in order 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. (45CFR 164.502(g)(4)).
- h) 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 him/her to examine a recipient for the purpose of diagnosing the recipient's present condition shall be permitted to review, on the premises of the provider, 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 330.1750 of the Mental Health Code.
  - (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 that, by law, permit or require disclosure.
- i) A representative of Michigan Protection and Advocacy Services (MPAS) shall be provided access to the records of:
- (1) A recipient of mental health services, with the consent of the recipient, empowered guardian, or parent with legal and physical custody of a minor recipient.
  - (2) A recipient of mental health services, including a recipient who has died or 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 of Michigan.
    - (c) 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. In this circumstance, for MPAS to access the recipient's record,
      - (i) MPAS must request access in writing;
      - (ii) CMH must determine if it is reasonable to believe that the recipient has is/has been subjected to abuse or neglect;
      - (iii) CMH shall limit disclosure to the relevant information expressly authorized by statute or regulation; and
      - (iv) CMH shall maintain documentation of all disclosures.
- j) A recipient of mental health 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 recipient is in serious and immediate jeopardy.
  - (2) 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.

(3) The representative has failed or refused to act on behalf of the recipient.

k) An executor, administrator, or other person with authority to act on behalf of a deceased recipient or of the deceased recipient's estate, shall be treated as a personal representative, i.e., as though he or she was the recipient.

7. Disclosure in the discretion of the holder of the record--WITHOUT CONSENT:

a) Confidential information and clinical records may be exchanged for legitimate treatment related purposes within, and between, CMH and Network service providers without an authorization for release of information.

b) Staff of the CMH Network and providers may disclose confidential information without consent:

(1) As necessary in order for a recipient to apply for or receive benefits, only if the benefits shall accrue to the CMH Network or provider or shall be subject to collection for liability for mental health services (e.g., Social Security Administration to receive SSI/SSD benefits).

(2) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the person who is the subject of the information can be identified from the disclosed information only when such identification is essential in order to achieve the purpose for which the information is sought, or when preventing such identification would clearly be impractical, but in no event when the subject of the information is likely to be harmed by such identification (e.g., JCAHO, Medicaid, Census).

(3) 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 recipient or other persons. See "Disclosure under Duty to Warn" (section J) of this procedure.

**G. Substance Abuse Records:**

1. Records of the identity, diagnosis, prognosis, or treatment of any recipient which are maintained in connection with the performance of any drug abuse prevention function are confidential and shall be disclosed only for the purposes and under the circumstances detailed in this procedure.

2. Restrictions on disclosure apply to any information, whether or not recorded, which:

a) Would identify the recipient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person, and

b) Is alcohol or drug abuse information obtained by a federally assisted program for the purpose of diagnosis, treatment or referral for treatment of alcohol or drug abuse.

3. The restriction on use of information to initiate or substantiate any criminal charges against a recipient or to conduct any criminal investigation of a recipient applies to any information, whether or not recorded, which is drug or alcohol abuse information obtained by a federally assisted program.

4. The regulations do not restrict a disclosure that an identified individual is not

and never has been a recipient.

5. The regulations do not apply to the following disclosures:
  - a) Communication among staff of CMHA-CEI and/or Network providers who need the information to carry out their duties.
  - b) Communications between a program and/or an entity having direct administrative control over the program (e.g., between CEI and Mid State Health Network).
  - c) Communications between a program and a qualified service organization with which there exists a written agreement/contractual relationship (e.g., laboratories, data processing contracts, etc).
  - d) Reports of the actual or threatened commission of a crime on program premises or against program personnel to law enforcement officers.
  - e) A report of suspected child abuse/neglect.
6. The following types of disclosures are permitted under carefully controlled circumstances:
  - a) Disclosures with recipient authorization.
  - b) A program may disclose those records in accordance with the recipient's authorization to any individual or organization named in the authorization.
  - c) A program may disclose information about a recipient to those persons within the criminal justice system which has made participation in the program a condition of the disposition of any criminal proceedings against the recipient or of the recipient's parole or other release from custody if:
    - (1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the recipient's progress (e.g., probation or parole officers), and
    - (2) The recipient has signed a written authorization. Authorization to release information shall not extend longer than reasonably necessary to serve the purpose for which it was given. The only exception is: the duration and revocation of the authorization to release information about a recipient to persons within the criminal justice system which have made participation in a substance abuse treatment program a condition of the disposition of any criminal proceeding against the recipient, or the recipient's parole, or other release from custody have special consideration.
    - (3) The authorization must state that is revocable upon the passage of a specified amount of time or the occurrence of a specified event which is consistent with final disposition of the conditional release or other action in connection with which authorization was given.
7. Disclosures without authorization
  - a) Medical emergencies: Recipient identifying information may be disclosed to medical personnel who have a need for information about a recipient for the purpose of treating a condition which poses an immediate threat to the health of the individual and which requires immediate medical intervention and there is no time to get authorization. Immediately following disclosure, the program must document the disclosure in the recipient's record

and include:

- (1) The name of the medical personnel receiving the information.
- (2) The medical personnel's affiliation with any health care facility.
- (3) The name of the person making the disclosure.
- (4) The date and time of the disclosure.
- (5) The nature of the emergency prompting the disclosure.

b) Research Activities: Recipient identifying information may be disclosed if:

(1) The program director makes a determination that the receiver of the information:

- (a) Is qualified to conduct the research, and
- (b) Has a research protocol that prevents the researcher from identifying any recipients in the research report and requires the researcher to protect the confidentiality of the records through appropriate storage security and through conformance with the non-disclosure standards of the federal regulations.

(2) The research has been approved in accordance with the established policies and procedures of CMHA-CEI governing research (Research and Publication policy and procedure 1.1.06).

c) Audit and evaluation activities: Types of auditors and evaluators who can perform on-site review are:

- (1) Any federal, state, or local government agency which provides financial assistance to the program or regulates the activities of the program; or
- (2) Any private person which provides financial assistance to the program, which is a third party payer covering recipients in the program or which is a peer review organization performing a utilization or quality control review.

8. Court Orders Authorizing Disclosure

a) The legal effect of a court order related to substance abuse services is a unique kind that does not require that information be released. Instead, it merely lifts any federal prohibitions against release of the records. A subpoena or similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompanying an authorizing court order entered under the federal regulations.

b) A court order under the regulations may authorize disclosure of confidential communications made by a recipient to a program in the course of diagnosis, treatment, or referral for treatment only if:

- (1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;
- (2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child

abuse and neglect, or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the recipient offers testimony or other evidence pertaining to the content of the confidential communications.

c) Court orders authorizing disclosures for non-criminal purposes

(1) An order authorizing the disclosure of recipient records for purposes other than criminal investigation may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(a) Other ways of obtaining the information are not available or would not be effective, and

(b) The public interest and need for the disclosure outweigh the potential injury to the recipient, the therapeutic relationship, and the treatment services.

(2) A court order authorizing such a disclosure must:

(a) Limit disclosure to those parts of the recipient's record which are essential to fulfill the objective of the order.

(b) Limit disclosure to those persons whose need for information is the basis for the order.

(c) Include such other measures as are necessary to limit disclosure for the protection of the client, the therapeutic relationship, and the treatment services.

d) Orders authorizing disclosure and use of records to criminally investigate or prosecute recipients: The court may authorize the disclosure and use of recipient records for the purpose of conducting a criminal investigation or prosecution of a recipient only if the court finds that ALL of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the recipient, to the physician-client relationship and to the ability of the program to provide services to other recipients is outweighed by the public interest and the need for the disclosure.

H. **Disclosure of Confidential Information relating to diseases** not known to be spread by casual contact (e.g., Human Immunodeficiency Virus [HIV], Acquired Immunodeficiency Syndrome [AIDS], Aids Related Complex [ARC], Hepatitis B [HBV], and Cytomegalovirus [CMV]).

1. Strictest confidentiality shall be maintained for all clinical records identifying a diagnosis of a disease not known to be spread by casual contact. All staff are mandated to respect the confidentiality of that recipient's medical condition.

2. The diagnosis of HBV or CMV will be made available to health care providers

and other direct service providers placed at risk by contact with infected blood/body fluids.

3. Information pertaining to a recipient who has a serious communicable disease or infection of HIV, AIDS, or ARC may be disclosed only pursuant to a court order or subpoena, after consultation with the Medical Director.

a) The court that is petitioned to order the disclosure of such information must determine that:

(1) Others ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential for injury to the recipient.

b) If the court orders disclosure of such information, it must take all of the following steps:

(1) Limit disclosure to those parts of the recipient's record that are determined by the court to be essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for the information is the basis of the order; and

(3) Include such other measures that are considered necessary by the court to limit disclosure for protection of the recipient.

c) To the Children's Protective Service department of the Michigan Department of Human Services, or a law enforcement agency if a report is required under the child protection law.

d) To the Michigan Department of Community Health without identification of the recipient.

e) To the local health department with recipient identifiers (i.e., name, address, and telephone number).

f) To another health care provider (a person licensed by the state to provide health care such as a physician, RN, LPN, dentist) for one or more of the following reason:

(1) To protect the health of an individual.

(2) To prevent further transmission of the disease.

(3) To diagnose or care for the recipient.

g) If the disclosure is expressly authorized in writing by the recipient, the written authorization must specify that HIV, ARC, or AIDS information may be released.

h) If the recipient is a minor or incapacitated, the written authorization may be executed by the parent or legal guardian.

i) A minor who is, or professes to be, infected with VD or HIV, may give an informed consent for services by a physician, hospital, or clinic. The consent of any other person is not necessary to authorize services to be provided to a minor who gives an informed consent. A minor who has requested service without parental consent will be responsible for providing consent for the release of information when consent is required.

j) When deemed necessary to protect the health of other recipients or staff, the Medical Director will work with the infected person, or parent/guardian to secure a release of information.

k) Any person inappropriately disclosing information about a recipient

pertaining to HIV, ARC, AIDS will be subject to any local, state, or federal penalties for unauthorized disclosure. A penalty also applies to the employer of the staff responsible for the violation unless the employer had in effect, at the time of the violation; reasonable precautions designed to prevent the violation (this policy meets this criteria). CMHA-CEI will also take firm and fair administrative action for inappropriate disclosure of such information.

l) With AIDS, ARC, or HIV-infection, Michigan statute MCL 333.5131 (5)(b) addresses the duty to warn issue:

(1) A physician may disclose information pertaining to a person with AIDS, ARC, or HIV-infection to a contact of that person if the physician determines disclosure "is necessary to prevent a reasonably foreseeable risk of further transmission of HIV."

(2) The statute, however, does not impose an affirmative duty to disclose the information.

(3) If information is disclosed, identifying information should not be disclosed unless "reasonably necessary." MCL 333.5131 (7).

(4) Physicians may shift duty to warn (and the possible litigation) by referring the case to the local health department, who will then notify the contacts. MCL 333.5114 a(1).

4. Information revealed by the recipient related to HIV, AIDS, or ARC during the assessment process and/or the ongoing provision of mental health or substance abuse services is considered privileged and confidential, and will be handled as any other clinical information.

a) Information revealed by the recipient relating to HIV, ARC, or AIDS, during the assessment process and/or ongoing provision of services, may be shared among members of the treatment team if this knowledge is relevant to the treatment of the recipient.

b) Although every effort should be expended to maintain the privacy of the person infected with HIV, AIDS, or ARC, recipient records provide a medium of communication and chronicle recipient care. Therefore, information relevant to the ongoing care of the recipient infected with HIV, AIDS or ARC must be recorded in the recipient record as with any other relevant material.

c) If information gathered through the assessment relative to AIDS, ARC, or HIV is to be disclosed to persons other than members of the treatment team or health care providers with a "need to know," prior authorization must be obtained.

**I. Disclosure of Privileged Communication:**

1. Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to these, unless the recipient has waived the privilege, except in the following circumstances, where the privileged communications shall be disclosed upon request:

a) When the privileged communication is relevant to a physical or mental condition of the recipient which the recipient has introduced as an element of his/her claim or defense in a civil or administrative case or proceeding, or which, after the client's death, has been introduced as an element of his/her claim or defense by a party to a civil or administrative case or proceeding.

b) When the communication is relevant to a matter under consideration in a proceeding governed by the Mental Health Code, but only if the recipient was

informed that any communications could be used in the proceeding (e.g., civil commitment hearing).

c) When the communication is relevant to a matter under consideration in a proceeding to determine legal competence or the need for a guardian, but only if the recipient was informed that any communication made could be used in such a proceeding.

d) In civil actions by or on behalf of the recipient, or criminal actions arising from the treatment of the recipient against the mental health professional for malpractice.

e) When the communication was made during an examination ordered by a court, prior to which the recipient was informed that the communication would not be privileged, but only with respect to the particular purpose for which the examination was ordered (e.g., court-ordered custody evaluation).

f) When the communication was made during treatment the recipient was ordered to undergo to render him/her competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with competence of the recipient to stand trial.

2. In instances where disclosure of privileged communications is prohibited, the fact that the recipient has been examined or treated or undergone diagnosis shall also not be disclosed, unless relevant to a determination by a health care insurer, health care corporation, non-profit dental care corporation, or health maintenance organization of its rights under a policy, contract, or certificate of insurance or health care benefits.

**J. Disclosure Under 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 person, 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.

2. The mental health professional shall do one or more of the following in a timely manner:

a) Hospitalize the recipient, or initiate proceedings to hospitalize the recipient (under Chapters 4 or 4A of the Mental Health Code).

b) Make a reasonable attempt to communicate the threat to the third person, and communicate the threat to the local police department or county sheriff for the area where the third person resides or for the area where the recipient resides, or the state police.

3. If the third person is a minor or incapacitated by other than age, staff will implement J.2.b) above, and communicate the threat to the Michigan Department of Health and Human Services of the county in which the third person resides and to the custodial parent, noncustodial parent, or legal guardian, whoever is appropriate in the best interests of the third person.

**III. Definitions:**

A. Authorization or consent: either A written agreement executed by a recipient, parent of a minor recipient, empowered guardian, or a recipient's legal representative with authority to execute a consent, or A verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

- B. **Confidential**: Communication made with the understanding that the information will not be disclosed.
- C. **Confidential information**: Information pertaining to a recipient. This includes all individually identifiable information, regardless of the form, or format, in which it is maintained, e.g.: paper or electronic records.
- D. **Covered Program**: any program that identifies itself as providing alcohol and drug abuse diagnoses, treatment, or referral for treatment which is federally assisted, directly or indirectly. E.g.: At CMHA-CEI, these programs are CSATP, CATS, and HOC, CCCC.
- E. **Electronic transfer**: any technology used to send information without physical exchange of documents, e.g.: e-mail, facsimile, etc.
- F. **Emancipated minor**: An individual who is under the age of 18 and is married, living on his/her own, serving in the military, or abandoned.
- G. **Holder of the record**: The organization responsible for maintaining the case file of a recipient.
- H. **Immediate client care**: A situation where information about a recipient is needed to provide continuity of care in an acute setting. Examples are: When a recipient is transferred from residential care to the hospital; when a client is receiving services that are time-sensitive such as when information is needed within 24-72 hours of the recipient's presentation to Emergency Services to develop an alternative treatment plan, or to coordinate emergency services with community health care providers.
- I. **Personal representative**: an individual with court-ordered authority to act on behalf of another.
- J. **Privileged communication**: A communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a recipient, 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. Independent privileges exist which protect confidential communications made by a client to a certified social worker, social worker, social work technician or agency employing them. Communications by the client and advice provided by the professional staff are both protected.
- K. **Remedial action**: an administrative intervention that does all of the following:
  - 1. Corrects or provides a remedy for a violation.
  - 2. Is implemented in a timely manner.
  - 3. Attempts to prevent a recurrence of a violation.

**IV. Monitor and Review:**

This procedure is reviewed annually by the Director of Quality, Customer Service, and Recipient Rights. This procedure is monitored by accrediting bodies and regulatory agencies as applicable.

**V. References:**

- A. 42 CFR Part 2
- B. 45 CFR 164.502(g)(4)
- C. Michigan Mental Health Code (PA 258 of 1974, as amended)
- D. MCL 600.2157, 333.16648, 330.18117, 3330.18237, 722.621-638, 333.5131, 333.5114
- E. CMHA-CEI Procedure 1.5.01E, Email Use and Responsivities
- F. CMHA-CEI Policy and Procedure 1.1.06, Research and Publications

**VI. Review Log**

<b>Review Date</b>	<b>Reviewed By</b>	<b>Changes (if any)</b>
6/10/88, 8/16/89, 4/30/90, 7/10/92, 7/1/93, 1/6/00, 2/29/00, 8/29/01, 3/16/04, 6/21/05, 2/1/07, 12/4/07, 2/12/08, 5/20/10, 5/12/11, 2/1/12, 3/10/13	----	----
1/27/17	QI Specialist	Adding II A&B, reorganizing and updating wording to make clearer, Update to new format

**VII. Attachments: None.**