BERRIEN MENTAL HEALTH AUTHORITY
PROCEDURE

SUBJECT: Confidentiality & Disclosure	SECTION: 01-07-01 Page 1 of 6
APPLICATIONS: All Programs & Services (including all staff and contract providers) EFFECTIVE DATE: 11/12/02 APPROVED BY: _____ Chief Executive Officer REVISED: 3/05, 5/05, 7/05, 5/15, 7/18, 4/2020, 1/2022, 2/2026	REQUIRED BY: MHC 748, 748 (a), 749, 750, 752 AR 7051

POLICY:
It is the policy of Berrien Mental Health Authority (BMHA) that all information in the consumer's case record, and other information acquired in the course of providing mental health services is and shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside BMHA only in the circumstances and under the conditions set forth in Sections 748, 748(a) and 750 of the Michigan Mental Health Code (P.A. 258 of 1974, as amended). A summary of Section 748 of the Mental Health Code is part of each recipient file. The confidential information disclosed shall be limited to that which is germane to the authorized purpose for which disclosure was sought. Information shall be provided as necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. {MHC 1748 (7)(b)}.

PURPOSE:
To ensure information gathered in the course of providing services and supports to an individual is kept confidential and that all disclosures of such information are in accordance with relevant state and federal guidelines and recorded as required, therefore, release of clinical records are executed exclusively by the Medical Records Department and individuals authorized to do so.

STANDARDS: (timelines)

I. Written requests from DHHS/CPS for pertinent records and information shall be released within 14 (fourteen) days of the date the request was received.
II. For requests of release of information of case records of competent adults made subsequent to March 28, 1996, releases shall not be withheld, and are done as expeditiously as possible, but in no event later than the earlier of 30 (thirty) days

after receipt of the request, or prior to release from treatment. (See Procedure section # 5 for more details.)

III. If a request for information has been delayed, the Chief Executive Officer (CEO) shall review the request and make a determination if the disclosure would be detrimental to the recipients or others within 3 (three) business days if the record is on-site, or 10 (ten) business days if the record is off-site. (See Procedure section # 7. for accompanying requirements)

DEFINITIONS:

1. **Consumer/Recipient**: An adult, or empowered guardian of a child, or a legally empowered guardian of a person who is legally incapacitated or has a developmental disability.

2. **Privileged Communication:** A communication made to a psychiatrist or psychologist, or someone under the supervision of such a person, in connection with the examination, diagnosis, or treatment of a recipient, or to other persons while they are participating in such examination, diagnosis, or treatment.

PROCEDURE:

1. All written disclosures will be documented in the consumer's record and will include the following: *(See procedure #01-31-01 Accounting & Tracking Disclosures)*
    a. The information released,
    b. The purpose stated by the person requesting the information,
    c. The date the information was sent,
    d. To whom the information was released,
    e. A statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released and must include how the disclosed information is germane to the stated purpose.
    f. The part of law under which disclosure is made
2. When requested, confidential information shall be disclosed only under 1 (one) or more of the following circumstances: *(See procedure #01-31-07 Subpoenas & Court Orders in Clinical Service Delivery)*
    a. Pursuant to orders or subpoenas of a court of record, or subpoenas of the legislature for non-privileged information, unless the information is made privileged by law.
    b. To a prosecuting attorney as necessary for the prosecuting attorney to participate in a proceeding governed by the MHC.
    c. To a recipient's attorney with consent from the recipient and/or guardian.
    d. When necessary in order to comply with another provision of law, e.g., Children's Protective Services Act.
    e. To the Department of Health and Human Services (DHHS) when 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 when the information is necessary for that office to discharge its constitutional responsibility.
g. To the consumer's surviving spouse, or if none, the closest relative of the recipient for purposes of applying for and receiving benefits, but only if the spouse or closest relative has been designated the personal representative or has a court order. If there is no surviving spouse, to the person or person's most closely related to the deceased consumer within the third degree of consanguinity as defined in civil law. *(See procedure #10-31-07 Access to Deceased Consumer's Medical Records)*
h. 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 consent or release executed by the recipient, by a legally empowered guardian, or by the parents of a minor with legal and physical custody, shall be permitted to review, on the provider's premises, 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 all owed 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 a consent or release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records. *(See procedure #10-31-06 Disclosure Not Requiring Authorization)*

3. 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. 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. Within 14 (fourteen) days after receipt of a request made under this subsection, the mental health professional shall release those pertinent mental health records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation. 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 give access to mental health records or information

under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

4. Except as otherwise provided in MHC 748 subsection (4) confidential information may be disclosed to providers of mental health services to the recipient or to any individual or agency if the consent has been obtained from:
    a. The recipient
    b. The recipient's guardian with authority to consent
    c. The parent with legal custody of a minor recipient
    d. The court approved personal representative or executor of the estate of a deceased recipient
5. For case record entries made subsequent to March 28, 1996, confidential information in the recipient's record shall be disclosed to the adult recipient, upon his/her request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. The release shall be done as expeditiously as possible but in no event later than the earlier of 30 (thirty) 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. In other words; competent adults cannot have information entered into their record subsequent to March 28, 1996 withheld for detriment by BMHA.
6. The CEO may make a determination that disclosure of information may be detrimental to the recipient or others. If the CEO declines to disclose information because of the possible detriment to the recipient or others, then the CEO shall determine whether part of the information may be released without detriment. A determination of detriment shall not be made if the benefit to the recipient from the disclosure outweighs the detriment. If a request for information has been delayed, the CEO shall review the request and make a determination, within 3 (three) business days if the record is on-site or 10 (ten) business days if the record is off-site, whether the disclosure would be detrimental to the recipients or others, unless section 748(4) of the act applies to the request. The CEO shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information. *(See procedure #01-31-03 Consumer Access to Health Information for agency process.)*
7. When information made confidential is disclosed, the identity of the individual to whom it pertains will be protected and will not be disclosed unless it is germane to the authorized purpose for which disclosure was sought. When practical, no other information will be disclosed unless it is germane to the authorized purpose for which disclosure was sought.
8. When consent has been obtained, confidential information may be shared with a mental health service provider; the recipient and/or legal guardian; the parent of a minor; or another individual or agency, except when the holder of the record (BMHA CEO) determines in writing that disclosure would be harmful to the recipient or others.
9. If the request for information has been denied, this determination can also be appealed to the Office of Recipient Rights with jurisdiction.

10. Information shall be provided to private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings as follows:
    a. 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 750 (1) of the act.
    b. 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.
11. A prosecutor may be given non-privileged or privileged information, which may be disclosed if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission, information relevant to alternatives to admission to a hospital or facility, and other information designated in policies or procedures of the governing body.
12. The holder of the record may disclose information that enables a consumer 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 services.
13. If required by federal law, the agency shall grant a representative of Disability Rights Michigan access to the records of all of the following:

    a) A recipient, if the recipient or other representative has consented to the access.

    b) A recipient, including a recipient who has died or whose whereabouts are unknown, if all of the following apply:
        1. Because of mental or physical condition, the recipient is unable to consent to the access.
        2. The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.
        3. The 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.

    c) A recipient who has a guardian or other legal representative if all of the following apply:
        1. The Disability Rights Michigan has received a complaint 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, Disability Rights Michigan 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.

14. The agency shall assure that 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 MHC are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena.
15. When release of information for clinical purposes by the individual or the individual's guardian, or parent of a minor, has been received by the agency, a copy of the entire medical and
16. clinical record is released to the provider of mental health services.
17. After having gained access to treatment records, a recipient, guardian, or parent of a minor recipient may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record; the recipient or other empowered representative is allowed to insert into the record a statement correcting or amending the information at issue; the statement shall then become a part of the record. *(See procedures #01-31-03 Consumer Access to Health Information and #01-31-04 Consumer Right to Request an Amendment to Protected Health Information)*

Other related procedures shall minimally incorporate the standards as outlined in this document into BMHA practice to ensure adherence to the MHC and other provisions of law.

Reviewer: Office of Recipient Rights & HIPAA/Privacy Officer
Reviewed: 4/07, 2/08, 7/09, 6/10, 4/11, 7/12, 7/13, 4/14, 5/15, 6/16, 4/17, 7/18, 5/19, 2/2020, 4/2020, 5/2021, 1/2022, 8/2023, 7/2024, 4/2025, 2/2026