

**BAY-ARENAC BEHAVIORAL HEALTH AUTHORITY
POLICIES AND PROCEDURES MANUAL**

Chapter: 3	Member Rights and Responsibilities		
Section: 3	Rights of Consumers		
Topic: 2	Confidentiality and Disclosure		
Page: 1 of 10	Supersedes Date: Pol:10-16-03, 8-15-03, 6-3-02, 9-20-01, 7-15-99 Proc: 6-15-09,5-6-03, 6-3-02, 9-20-01, 7-28-98	Approval Date: Pol: 8-16-18 Proc: 6-13-18	<hr/> <i>Board Chairperson Signature</i> <hr/> <i>Chief Executive Officer Signature</i>
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Policy

It is the policy of Bay-Arenac Behavioral Health Authority (BABHA) that information in the 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.

Further, it is the policy of the Board that disclosure of information will only take place when an approved disclosure document authorizing such is signed by the recipient, guardian or parent of a minor, and only when disclosure is germane to the treatment of the recipient, and when disclosure is in compliance with the Mental Health Code and in compliance with other provisions of applicable law, including as necessary for the treatment, coordination of care, or payment for the delivery of mental health services in accordance with HIPAA (1996).

Section 748(4) states: For case record entries made subsequent to March 28, 1996, information made confidential shall be 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. 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.

Unless section 748(4) of the act applies to the request for information, it is the policy of the Board that within three (3) business days of a request by the recipient for disclosure of a clinical record, the Chief Executive Officer shall make a determination of detriment. If the record of the recipient is located at another location, the Chief Executive Officer shall make a determination of detriment within ten (10) business days from the date of the request. Any decision by the Chief Executive Officer to delay the release must be executed and transmitted to the recipient in writing.

Purpose

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This policy and procedure is established to ensure that the information in a recipient’s record is kept confidential.

Education Applies to

- All BABHA Staff
- Selected BABHA Staff, as follows:
- All Contracted Providers: Policy Only Policy and Procedure
- Selected Contracted Providers, as follows:
 - Policy Only Policy and Procedure
- BABHA’s (Affiliates): Policy Only Policy and Procedure
- Other

Definitions

N/A

Procedure

I. Standards

A. Confidentiality

1. Confidential information may be disclosed to provider of mental health services to the recipient or to any individual or agency if consent has been obtained from:
 - a. Recipient
 - b. Recipient’s guardian with authority to consent
 - c. Parent with legal custody of a minor recipient
 - d. Court approved personal representative or executor of the estate of a deceased recipient.
2. 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

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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.

3. A summary of Section 330.1748 of PA 258 of the Michigan Mental Health Code (MMHC) will be made part of each recipient's file.

B. Disclosure - General Information

1. All disclosures shall be consistent with sections 748 and 750 of the MMHC and with Agency standards.
2. Requests for confidential information shall be directed to clinical records staff, in residential programs that maintain clinical records, for processing and documentation.
3. A request for information about a staff that has applied for, or is receiving, services shall be and led in accordance with section 748 and Agency standards.
4. Information may be shared as necessary for the treatment, coordination of care, or payment for the delivery of mental health services in accordance with HIPAA (1996).

C. Disclosures - Mandatory

1. When requested, confidential information shall be disclosed only under one or more of the following circumstances:
 - a. Pursuant to valid orders or subpoenas 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 to the prosecuting attorney to participate in a proceeding governed by the MMHC if it is either:
 - Non-privileged information or:
 - 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 the Agency's policies.

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- 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. To the Michigan Department of Health and Human Services if the information is necessary in order for the Department to discharge a responsibility placed upon it by law
 - e. To the Office of the Auditor General if the information is necessary for that office to discharge its constitutional responsibility
 - f. To a surviving spouse, or if none, 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.
 - g. To an adult recipient if all of the following apply:
 - i. A request has been received from the recipient
 - ii. The recipient does not have a guardian and has not been adjudicated legally incompetent
 - iii. The case entry was made after March 28, 1996. For these records release will be done as expeditiously as possible but in no event later than the earlier of 30 days of the request or prior to release of treatment.
 - h. When necessary to comply with another division of law.
2. Within 14 days after receipt of a written request from the Department of Health and Human Services (MDHHS)/Adult or Child Protective services pertinent records and information shall be released.
 3. The holder of the records shall not deny or delay releasing information which 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, that 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

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the court-appointed personal representative or executor of the estate of a deceased recipient, confidential information may be disclosed to all of the following:

Providers of mental health services to the recipient:

The recipient of his or her guardian or 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.

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

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1. If a request for a discretionary disclosure is delayed, the director of the provider shall review the request and make a determination within 3 business days if the record is on site or 10 business days if the record is off site, if the disclosure would be detrimental to the recipient or others.
2. 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. The person seeking disclosure, a recipient, a legally empowered guardian, or a parent of a minor who consents to disclosure may file a complaint with the Office of Recipient Rights.
3. If a recipient, guardian, or parent of a minor recipient is not satisfied with the determination, an appeal may be filed with the Recipient Rights Office having jurisdiction.

F. Disclosures - Protection and Advocacy

An identified representative of Disability Rights Michigan shall be granted access to recipient's records in accordance with Public Law 94-103, 89 Stat. 486, Public Law 99-319, 100 S Act 258 of the Public Acts of 1974, as amended. This includes:

1. A recipient, if not 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 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
 - 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
 - d. If Michigan Protection and Advocacy 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:
 1. Request must be put in writing

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2. BABHA must make a determination, if in their professional judgment; it is reasonable to believe that the recipient is/has been subjected to abuse or neglect.
 3. BABHA must limit the disclosure to the relevant information expressly authorized by statute or regulation.
 4. BABHA must maintain documentation of all disclosures.
3. 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, Disability Rights Michigan 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 – Adult or Child Protective Services

1. Staff shall report suspected abuse or neglect to the MDHHS Adult or Child 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 the DHS 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 the individuals or committees assigned a peer review function under section 143a (1) of the MMHC are confidential and shall be used only for peer review, are not public records, and are not subject to court subpoena.

I. Statement Correction 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

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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 the Agency, the recipient's record. An attorney who has been retained or appointed to represent a minor pursuant to an objection of 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 copies of recipient records.

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

1. 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. They shall be notified before their review when records contain privileged communication, which cannot be disclosed in court, unless disclosure is permitted because of an express waiver of privilege or by law, which permits or requires 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.

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L. Providing Information to a Prosecuting Attorney

A prosecutor may be given nonprivileged information or privileged information, which may be, disclosed pursuant to section 750 or the MMHC 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 the Agency's policies.

M. Authorizing Release of Information for Clinical Purposes

When authorized to release information for clinical purposes by the individual or the individual's guardian or parent of a minor, BABHA will release a copy of the entire medical and clinical record to the provider of mental health services.

N. Inserting Recipient Statement

A recipient, 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.

1. The recipient or other empowered representative will be allowed to insert into the record a statement corrected or amending the information at issue.
2. The statement will become part of the record.

O. Recording

A record of disclosures shall be kept including:

1. Information released
2. To whom it is released.
3. Purpose stated by person requesting the information.
4. Statement indicating how disclosed information is germane to the stated purpose.
5. The part of law under which disclosure is made.
6. Statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released.

Attachments

N/A

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Related Forms

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Related Materials

N/A

References/Legal Authority

Michigan Department of Community Health-Administrative Rules *Revised Edition 2002*(AR 7051)
Michigan Mental Health Code 330.1748, 330.1748a and 330.1750
HIPAA 45 CFR

SUBMISSION FORM				
AUTHOR/ REVIEWER	APPROVING BODY/COMMITTEE/ SUPERVISOR	APPROVAL /REVIEW DATE	ACTION (Deletion, New, No Changes, Replacement or Revision)	REASON FOR ACTION - If replacement list policy to be replaced
Vicki Atkinson	Linda Maze	6/15/09	Changes	Grammatical changes made
		12/31/12	No changes	Triennial Review-No changes
Melissa Prusi	Christopher Pinter	6/27/16	Revision	Triennial Review-minor changes to reflect state agency name changes.
Melissa Prusi	Christopher Pinter	6/13/18	Revision	Added language to Policy and procedure about disclosing information.
Melissa Prusi	Christopher Pinter	06/29/2019	Revision	Triennial and annual review – no changes
Melissa Prusi	Christopher Pinter	11/05/2020	Revision	Annual Review – Changed MPAS to DRM
Melissa Prusi	Christopher Pinter	06/23/2021	No changes	Triennial Review