

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

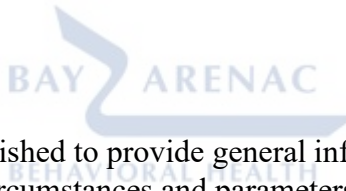
<b>Chapter:</b> 13	<b>Corporate Compliance</b>		
<b>Section:</b> 1	<b>HIPAA</b>		
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**Policy**

It is the policy of Bay-Arenac Behavioral Health Authority (BABHA) to provide definitive guidelines and processes for the uses and disclosures of protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Michigan Health Codes and the Code of Federal Regulations (CFR).

**Purpose**



This policy and procedure is established to provide general information as well as describe BABHA practices regarding the circumstances and parameters under which uses and disclosures of PHI are permitted. This particular policy and procedure is primarily designed for management staff to follow and is a companion policy and procedure to *C13-S01-T14 – Uses and Disclosures of PHI under HIPAA, the Michigan Health Codes, and the Code of Federal Regulations.*

**Education Applies to:**

- All BABHA Staff
- Selected BABHA Staff, as follows: All Management Staff and Medical Records Associate
- All Contracted Providers:  Policy Only     Policy and Procedure
- Selected Contracted Providers, as follows:
  - Policy Only     Policy and Procedure
- Other:

**Definitions**

De-identified PHI: Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

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Disclosure: The release of PHI to a person served, his/her legal representative, and/or to an outside entity or individual.

Electronic Media: (1) Electronic storage media includes memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; video tapes; audio tapes; and removable storage devices such as USB drives; or (2) transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

Health Information: Any information, whether oral or recorded in any form, that is created or received by BABHA and relates to an individual’s past, present, or future physical or mental health, or to the payment for such health care.

Individually Identifiable Health Information: Health information, including demographic information that identifies an individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Progress Notes: These notes are in a person served official medical record and document the delivery and effectiveness of services, including such items as stop and start times, modality and frequency of treatment, and summary of functional status. Documentation can be paper-based or stored on any form of electronic media.

Protected Health Information (PHI): Individually identifiable health information transmitted by or maintained in an electronic media format (E PHI), or transmitted or maintained in any other form or medium, including oral and/or paper.

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Psychotherapy Notes: These notes analyze the contents of discussion during an individual, family or group counseling session and often contain sensitive information relevant only to the provider. They are sometimes referred to as “process notes” and are distinguished from progress notes in that they capture clinical impressions and details. They are not included in the person served official medical record. Documentation can be paper-based or stored on any form of electronic media.

Workforce Member: Employees, volunteers, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity. This includes full and part time employees, affiliates, associates, students, volunteers, and staff from third party entities who provide service to the covered entity.

**Procedure**

**I. General Information**

1. Management should refer to the BABHA companion policy and procedure, *C13-S01-T14 – Uses and Disclosures of PHI under HIPAA, the Michigan Health Codes, and the Code of Federal Regulations* for restrictions regarding the use and disclosure of individually identifiable PHI.
2. There are no restrictions on the uses or disclosures of de-identified PHI, however, de-identification requires adherence to certain criteria and must first be reviewed with the BABHA Corporate Compliance Officer (CCO). See BABHA Policy and Procedure, *C13-S01-T15 – De-identification of Protected Health Information* for a detailed description and procedures as to what constitutes de-identified PHI and who is authorized to release this information.
3. Management staff are to follow the rules and limitations listed in the chart below when guiding workforce members in the uses, disclosures, or non-disclosures of PHI. Note that uses and/or disclosures of PHI relative to HIV/AIDS and SUD information

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and treatment are subject to specific limitations and sometimes different rules than those that apply to uses and/or disclosures of Mental Health (MH) information and treatment. The chart below clarifies those limitations and rules.

**NOTE:** There are additional procedures listed after the chart that also must be followed.

<b>Uses/Disclosures of PHI <u>with</u> Person's Authorization</b>			
<b>*SEE SPECIAL RULES FOR PSYCHOTHERAPY NOTES AT THE END OF THIS CHART</b>			
<b>TO:</b>	<b>MH Treatment Information</b>	<b>HIV/AIDS Information</b>	<b>SUD Treatment Information</b>
<b>Person Served</b>	<ol style="list-style-type: none"> <li>1. Disclose within 30 days of request all information created after March 28, 1996 provided the person served does not have a court appointed guardian and has not been adjudicated legally incapacitated.</li> <li>2. Disclose all information created before March 28, 1996 except information that BABHA's Chief Executive Officer</li> </ol>	<ol style="list-style-type: none"> <li>1. Disclose unless a workforce member determines that: <ul style="list-style-type: none"> <li>• Disclosure endangers the life/physical safety of the person served or another person</li> <li>• Another person named in the information would be substantially harmed by disclosure or the disclosure is to a guardian and the disclosure will cause substantial harm to the person served or another person.</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Disclose unless a workforce member determines that: <ul style="list-style-type: none"> <li>• Disclosure endangers the life/physical safety of the person served or another person</li> <li>• Another person named in the information would be substantially harmed by the disclosure or the disclosure is to a</li> </ul> </li> </ol>

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	(CEO), or designee, has determined within three (3) business days is detrimental to the person served or others. The person served may file a rights complaint regarding a denial.	2. Disclose or deny disclosure within 30 days of request. The person served may appeal a denial.	guardian and the disclosure will cause substantial harm to the person served or another person.  2. Disclose or deny disclosure within 30 days of request. The person served may appeal a denial.
<b>Third Parties</b> 1. Includes attorneys, other health care providers, health insurers/payors, employers, disability insurers, social services agencies and anyone not affiliated with BABHA  2. Also applies to disclosures for marketing and fundraising.	1. Disclose except for the following limitations: <ul style="list-style-type: none"> <li>• Make sure the authorization is valid per Attachment 1 of this policy and procedure</li> <li>• Unless disclosing PHI to another provider of MH services, information detrimental to the person served or others can be withheld. CEO, or designee, will make the decision about detriment within</li> </ul>	1. Disclose except for the following limitations: <ul style="list-style-type: none"> <li>• The authorization form must specifically reference HIV/AIDS information</li> <li>• Make sure the authorization is valid per Attachment 1 of this policy and procedure</li> </ul> 2. Do not disclose more information than the person served authorized.	1. Disclose except for the following limitations: <ul style="list-style-type: none"> <li>• The authorization form must specifically reference SUD treatment information</li> <li>• Make sure the authorization is valid per Attachment 1 of this policy and procedure</li> <li>• Inform the recipient that redisclosure is prohibited.</li> </ul>

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	<p>three (3) business days with input from workforce members. The person served can file a rights complaint regarding denial.</p> <ul style="list-style-type: none"> <li>• Do not disclose more information than the person served authorized.</li> <li>• Inform recipient that redisclosure is prohibited except for a purpose germane to the reason for which the person served authorized the disclosure.</li> </ul> <p>2. Disclose except for the following limitations: for payment purposes, one authorization at the beginning of services is sufficient for the entire course of treatment, unless, a payor requests psychotherapy notes (see special rules at the end of</p>		<p>2. Do not disclose more information than the person served authorized.</p>
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	this chart)  3. Disclose minimum necessary information.		
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**Uses/Disclosures of PHI without Person's Authorization**

**\*SEE SPECIAL RULES FOR PSYCHOTHERAPY NOTES AT THE END OF THIS CHART**

<b>WHEN ALLOWED</b>	<b>MH Treatment Information</b>	<b>HIV/AIDS Information</b>	<b>SUD Treatment Information</b>
<b>As Required by Contracts and/or Subscriber Agreements with Third Party Payors</b>	1. For claims, employees can rely on representations from health plans regarding information that is required and provide the following information as part of a claim to a health plan: <ul style="list-style-type: none"> <li>• Date of service</li> <li>• Demographic information</li> <li>• Information regarding the insurance</li> </ul>		

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	contract number, plan number, group number, etc. <ul style="list-style-type: none"> <li>• Diagnosis and/or procedure codes</li> <li>• Information regarding medical history</li> <li>• Referral or pre-certification information</li> <li>• Other information requested such as portions of the medical record related to the dates of service at issue</li> </ul>		
	2. For claims with unspecific requests, such as additional information to support a claim or defend an audit, only the minimally necessary information needed should be disclosed. The entire medical record should not be		



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	<p>routinely submitted but may be when necessary.</p> <p>3. For coordination of care with Medicaid Health Plans.</p>		
<b>As Required by a Specific Law</b>	<p>1. Examples of required disclosures:</p> <ul style="list-style-type: none"> <li>• To the Michigan Department of Community Health (MDCH) or the Office of the Auditor General to carry out legal duties</li> <li>• To the Federal Department of Health and Human Services to demonstrate compliance with HIPAA</li> <li>• To report suspected child or adult abuse to the Michigan Department of Human Services (DHS)</li> <li>• To report criminal abuse of a person</li> </ul>	<p>1. Disclose only in the following cases:</p> <ul style="list-style-type: none"> <li>• Report of suspected child abuse</li> <li>• Report of positive HIV results to MDCH</li> <li>• Partner notification</li> </ul> <p>2. Do not disclose more information than the law requires.</p> <p>3. Disclose only to the people identified in the law as authorized recipients.</p>	<p>1. Do not disclose.</p> <p>2. Complex legal rules apply.</p> <p>3. Consult with BABHA Privacy Officer or designee.</p>

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	served to police <ul style="list-style-type: none"> <li>• To report violent wounds on a person served to police</li> <li>• To assist DHS in investigations of alleged child abuse, neglect, exploitation or endangerment of a BABHA person served</li> <li>• To threatened victims under duty to warn</li> <li>• Reports of abuse, neglect, or domestic violence for a person who is not a child are permitted without authorization to an appropriate health or governmental authority under three circumstances:                         <ol style="list-style-type: none"> <li>1) where reports of suspected abuse are required by law;</li> <li>2) the report is not required by law but the individual agrees to such disclosure;</li> <li>3) the report is not</li> </ol> </li> </ul>		
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	<p>required by law, but is permitted by law and the provider believes (based upon professional judgment) that disclosure is necessary to prevent serious harm; or the individual is incapacitated and a law enforcement official represents that the disclosure is not going to be used against the individual and enforcement efforts will be adversely affected if the provider waits until the individual can agree <i>(under each of these three circumstances, the individual must be notified that the report has been made except where the provider determines, based upon professional judgment, that the</i></p>		
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	<p><i>notification would place the individual at harm or the individual is incapacitated and the personal representative who would receive such information on behalf of the individual is the suspected abuser).</i> (45 CFR 164.512.C.iii.B).</p> <p>2. Do not disclose more information than the law requires.</p> <p>3. Disclose only to the people identified in the law as authorized recipients.</p>		
<b>Licensure, Accreditation, Certification, Surveys/Audits, Governmental Investigations</b>	Disclose	Disclose	Disclose but only with these limitations: CEO, or designee, must have obtained written assurance that any survey/audit agency will hold

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			SUD treatment information in confidence, protect security of records, destroy all records once survey/audit is complete, not redisclose the identity of a person served in the survey/audit report or redisclose the information.
<b>Research</b>	<p>Disclose subject to the following limitations:</p> <ul style="list-style-type: none"> <li>• An Institutional Review Board (IRB) or Privacy Board must have waived the need for authorization</li> <li>• The research involves only information about deceased persons who received services</li> <li>• The disclosure is for identification of research subjects and is conducted entirely at BABHA offices</li> </ul>	Do not disclose without authorization.	<p>Disclose subject to the following limitations:</p> <ul style="list-style-type: none"> <li>• An Institutional Review Board (IRB) or Privacy Board must have waived the need for authorization</li> <li>• CEO, or designee, has determined that the researcher is qualified</li> <li>• CEO, or designee, has determined that the researcher will not redisclose person served information or identify a person</li> </ul>

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			served in the research report
<b>Imminent Threat of Harm to Person Served or Others</b>	<ol style="list-style-type: none"> <li>1. Disclose to police or another treatment provider if there is a compelling need for disclosure based upon a substantial probability of harm to the person served or others.</li> <li>2. Disclose to the intended victim under duty to warn</li> </ol>	<ol style="list-style-type: none"> <li>1. Disclose to another provider or a state or local health department, if necessary, to prevent transmission of HIV/AIDS or to protect the health of any individual.</li> <li>2. Other situations require person served authorization.</li> </ol>	<ol style="list-style-type: none"> <li>1. Disclose only in a “medical emergency” and: <ul style="list-style-type: none"> <li>• Only to medical personnel who need the information to treat the person served</li> <li>• For a medical condition that poses an immediate threat to the person served or anyone else</li> <li>• If the condition requires immediate treatment</li> <li>• Disclosure must be documented in the person served record</li> </ul> </li> <li>2. Other situations require person served authorization.</li> </ol>
<b>To Prosecuting Attorney</b>	Disclose	Do not disclose without authorization.	Do not disclose without

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<b>involved in an Involuntary Commitment Proceeding</b>			authorization.
<b>To Law Enforcement</b>	<p>Limited information for identification and location purposes is allowed for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person provided that only the following be disclosed:</p> <ul style="list-style-type: none"> <li>• Name and address</li> <li>• Date and place of birth</li> <li>• Social Security #</li> <li>• ABO blood type and rh factor</li> <li>• Type of injury</li> <li>• Date and time of treatment</li> <li>• Date and time of death, if applicable, and</li> <li>• A description of distinguishing physical characteristics, including height, weight, gender, race,</li> </ul>	<ol style="list-style-type: none"> <li>1. Do not disclose without patient consent or court order signed by a judge per MCLA 333.5131.</li> <li>2. Complex legal rules apply.</li> <li>3. Consult with BABHA Privacy Officer or designee.</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not disclose without person's consent per 42 CFR.</li> <li>2. Complex legal rules apply.</li> <li>3. Consult with BABHA Privacy Officer or designee.</li> </ol>

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	<p>hair and eye color, presence or absence of facial hair, scars, and tattoos.</p> <p><i>Any PHI related to the individual's DNA, DNA analysis, dental records, or typing, samples or analysis of body fluids or tissues is NOT allowed. (45 CFR 164.512.f.2.i.(a-h).ii)</i></p>		
<b>To Private Physicians or Psychologists Retained by the Court to Testify in Civil, Criminal, or Administrative Proceedings</b>	<p>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 consumer for the purpose of diagnosing the consumer's present condition shall be permitted to review, on the provider's premises, a record containing information concerning the consumer. They shall be notified before</p>	Do not disclose without authorization	Do not disclose without authorization



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	reviewing the record that the records contain privileged communication which cannot be disclosed in court under Section 750(2) of the MMHC.  2. Privileged information shall not be disclosed unless the disclosure is permitted because of an expressed waiver of privilege or because of other conditions, which by law, permits or requires disclosure. (Administrative Rules R330.7051)		
<b>To Surviving Spouse or Next of Kin of Deceased Person Served</b>	Disclose subject to these limitations: <ul style="list-style-type: none"> <li>Surviving spouse has priority over next of kin</li> <li>Next of kin must be related within 3<sup>rd</sup> degree of consanguinity</li> <li>Spouse/next of kin may only use information to apply</li> </ul>	Do not disclose without authorization. Disclose with authorization.	Do not disclose without authorization. Disclose with authorization.

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	for benefits to defray the cost of public MH treatment services		
<b>To Michigan Protection and Advocacy System (MPAS)</b>	<p>For all three (3) areas, disclose subject to these limitations:</p> <ul style="list-style-type: none"> <li>Because of mental or physical condition, the person served is unable to consent to access</li> <li>The person served does not have a guardian/other legal representative or the State is the person's guardian and MPAS has received a complaint on behalf of the person served, or has probable cause to believe, based on monitoring or other evidence, that the person served has been subject to abuse or neglect</li> <li>For a person served with a guardian, MPAS received a complaint, or MPAS has probable cause to believe the health or safety of the person served is in serious/immediate jeopardy; MPAS has contacted the representative and offered assistance; the representative has failed or refused to act</li> </ul>		
<b>Subpoenas</b>	<ul style="list-style-type: none"> <li>See BABHA policy and procedure, <i>C13-S02-T17 – Subpoenas, Search Warrants, and Unannounced Visit by the Government</i> for necessary procedures that must be followed.</li> </ul>		
<b>Court Orders</b>	<p>1. Any court or administrative tribunal can issue a court order requiring BABHA to disclose information, however, court orders are always signed by a judge.</p>	<p>Disclose only if the order:</p> <ul style="list-style-type: none"> <li>States that other ways of obtaining the information are not available or would not be effective</li> <li>Finds that the public interest and need for the disclosure outweigh the potential for injury to the person serve</li> <li>Limits disclosure to</li> </ul>	<p>Disclose but only if:</p> <ul style="list-style-type: none"> <li>The order states that the court determines that good cause exists for the disclosure. The court must find that other ways of obtaining the information are not available or would not be effective; and the</li> </ul>

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	<p>2. A court order must contain specific information, such as the name of the court, the case number assigned, the date the order was issued, etc. The Privacy Officer, or designee, needs to be consulted before staff disclose any information to ensure that the court order is valid and contains all necessary information.</p> <p>3. Occasionally, a court order does not specify what information should be disclosed in which case it is necessary to consult with the</p>	<p>those parts of the consumer's record that are determined by the court to be essential to fulfill the objective of the order</p> <ul style="list-style-type: none"> <li>Limits disclosure to those persons whose need for the information is the basis for the order</li> </ul>	<p>public interest and need for the disclosure outweigh the potential injury to the person served, the physician-person served relationship and the treatment services</p> <ul style="list-style-type: none"> <li>The order must limit disclosure to those parts of the person served record which are essential to fulfill the objective of the order</li> <li>The order must limit disclosure to those persons whose need for information is the basis for the order</li> <li>The order may not require disclosure of "confidential communications" unless the disclosure is necessary to</li> </ul>
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	<p>Privacy Officer, or designee, and possibly supervisory or other staff, to decide what information should be released.</p>		<p>protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse/neglect and verbal threats against 3<sup>rd</sup> parties; the disclosure is necessary in connection with an 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/neglect; or the disclosure is in connection with litigation or</p>
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			<p>an administrative proceeding in which the person served offers testimony or other evidence pertaining to the content of confidential communications</p>
<p><b>*Special Rules regarding Psychotherapy Notes for MH, HIV/AIDS and SUD</b></p>	<p>Special rules apply to psychotherapy notes because they are kept separate and are not part of a person’s medical record. Any requests for psychotherapy notes should be forwarded to the Privacy Officer, or designee, since they require a specific authorization for release except under the following circumstances:</p> <ol style="list-style-type: none"> <li>a) They are being used by the originator of notes for treatment;</li> <li>b) They are being used or disclosed by the provider for its own training program in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills, in group, joint, family, or individual counseling;</li> <li>c) They are being used or disclosed by the provider to defend itself in a legal action or other proceedings brought by the person served;</li> <li>d) They are being disclosed in certain special circumstances such as: <ol style="list-style-type: none"> <li>i. Required disclosure to the Secretary of the U.S. Department of Health and Human</li> </ol> </li> </ol>		

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	<p>Services in connection with a HIPAA investigation;</p> <ul style="list-style-type: none"> <li>ii. Disclosures required by law;</li> <li>iii. Disclosures related to health oversight activities concerning oversight related to the originator of the notes;</li> <li>iv. Disclosures that involve averting a serious threat to a person;</li> <li>v. Disclosures about a deceased person served to a coroner or medical examiner.</li> </ul>
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**II. Important Authorization /Revocation Information**

1. See the BABHA companion policy and procedure, C13-S01-T14 – *Uses and Disclosures of PHI under HIPAA, the Michigan Health Codes, and the Code of Federal Regulations - Section VI*, for important information on authorizations/revocations and the rules that govern authorizations for release of PHI (MH and/or SUD).
2. BABHA must retain all signed authorizations and revocations of authorizations for at least seven years as required by the State of Michigan Department of Technology, Management and Budget General Schedule # 20 – Community Mental Health Services Programs.

**III. Billing Information**

1. If released copies of PHI are billable, submit a memo to the BABHA Finance Department with the name and address of the entity to be billed, the amount, and the reason for the charge.

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2. Attorneys (including Records Copy Service and Records Deposition Service), private/commercial insurance companies, and private review agencies are not billed for first copies but are for any additional copies.
3. The BABHA Medical Records Associate, or designee, attaches a billing form to all requests from Social Security/Disability Determination. The form is filled out and up to \$15.00 is placed in the “amount billed” section.
4. Subpoenas for records may include a \$6.00 statutory fee. Unless stated that the requestor will not pay more than \$6.00, figure the total cost, subtract \$6.00, and send a bill for the remainder.
5. BABHA does not bill indigent persons served, and/or their authorized representatives, for copies of indigent persons’ medical records.
6. Billing fees are as follows:
  - a) Retrieval/mailing/handling - \$3.00
  - b) Copying fee - \$.12 per copy

**Attachments**

When is an Authorization Valid?

**Related Forms**

Authorization to Disclose, Obtain or Revoke Information

**Related Materials**

1. Regulations Governing Authorizations to Release PHI
2. BABHA Policies and Procedures

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- C13-S01-T14 – Uses and Disclosures of PHI under HIPAA, the Michigan Health Codes, and the Code of Federal Regulations
- C13-S01-T15– De-identification of Protected Health Information

**References/Legal Authority**

45 Code of Federal Regulations (CFR) §160  
45 CFR §162  
45 CFR §164.501 - Marketing Definition  
45 CFR §164.502(b)  
45 CFR §164.508 - Authorization  
45 CFR §164.512 – Uses and Disclosure not Requiring Authorization  
45 CFR §164.514(a), (d), (h) – De-identification of PHI  
45 CFR §164.528 – Accounting of Disclosures  
45 CFR §164.530 - Documentation and Retention  
Administrative Rules: R330.7051  
HIPAA Law of 1996  
Michigan Mental Health Code  
Michigan Public Health Code



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<b>Submission Form</b>		
<u>Approving Body/Committee/Supervisor:</u> J. Pinter, CCO Janis Pinter, Director	<u>Author/Reviewer:</u> J. Pinter, M. Wolber M. Wolber	<u>Approval/Review Date:</u> 2/6/14 4/4/14
<p><u>Result:</u>  Deletion <input type="checkbox"/>    New <input checked="" type="checkbox"/>    No Changes <input type="checkbox"/>    Replacement <input checked="" type="checkbox"/>    Revision <input type="checkbox"/></p> <p><u>List reason for deletion/replacement/revision here. If replacement, list policy to be replaced.</u>  Reviewed only and format updated  Written to reflect compliance with HIPAA, MI Mental Health and Public Health Codes, and the Code of Federal Regulations and serves as a companion policy to C13-S01-T14. This also replaces C13-S01-T11.  Revised to include information on rules that govern authorizations for release of PHI</p>		