

NORTHCARE NETWORK

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| POLICY TITLE: Consent to Share Information | CATEGORY: Quality Assessment & Performance Improvement | |
| EFFECTIVE DATE: 2/4/20 | BOARD APPROVAL DATE: 2/12/20 | |
| REVIEW DATE: 7/18/22 | REVISION(S) TO POLICY STATEMENT: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | OTHER REVISION(S): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| RESPONSIBLE PARTY: QI Coordinator/Compliance-Privacy Officer | CEO APPROVAL DATE: 8/2/22 Dr. Tim Kangas, CEO | |

APPLIES TO

NorthCare Network Personnel
Network Providers

POLICY

NorthCare Network requires each Member Community Mental Health Services Program (CMHSP), Substance Use Disorder (SUD) Providers, and MI Health Link (MHL) program providers to obtain consents to share information such as mental health records or information on treatment or referrals for alcohol and substance use disorder services. NorthCare and Network Providers will utilize, accept, and honor the MDHHS standard release form that was created by Michigan Department of Health and Human Services (MDHHS) under Public Act 129 of 2014 (MDHHS-5515 Consent to Share Behavioral Health Information for Care Coordination Purposes). The consent form is to be utilized for all electronic Health Information Exchange (HIE) environments.

NorthCare Network will not use or disclose protected health information without written authorization *except* where permitted or required by state and/or federal law(s).

Sharing Protected Health Information *NOT* Requiring a Signed Consent:

- Health Insurance Portability and Accountability Act (HIPAA) and the Michigan Mental Health Code (under Public Act 559 of 2016) allows for the sharing of mental health records for the purposes including, but not limited to: of treatment, payment, and coordination of care.
 - ✓ Treatment
 - ✓ Coordination of care
 - ✓ Payment for the delivery of mental health services
 - ✓ De-identified information for research
 - ✓ “Duty to Warn” situations (i.e., threats of serious and imminent harm made by an individual)
 - ✓ Mandatory reporting (i.e., elder and/or child abuse and neglect)
- Sharing information for Substance Use Service under the following conditions (42 CFR- Part 2; Subpart D and E):
 - ✓ Referrals and/or treatment for substance use disorder services with a Part 2 Program where NorthCare Network has direct administrative control over the Part 2 Program, such as Member CMHSPs.
 - ✓ Medical Emergencies (only in a bona fide medical emergency to medical personnel)

- ✓ De-identified information for research
- ✓ De-identified information for financial audits
- ✓ De-identified information for evaluation
- ✓ Specific Court Orders (i.e., to determine if an individual is under treatment, treatment hearings for minors)
- Refer to Procedures below for examples of when a signed consent is **not** required.

Sharing Protected Health Information that **DOES** Require a Signed Consent:

- When sharing information regarding mental health services for purposes other than payment, treatment, or coordination of care.
- When making referrals and/or sharing information for purposes of treatment for substance use disorder services with entities/individuals that are not under the direct administrative control of NorthCare Network, such as contracted SUD providers or other health care providers.
- Refer to Procedures below for examples of when a signed consent **is** required
- When a consumer's chart is flagged as 42 CFR Part 2, a consent is required for provider organizations whose staff may need access to the record.
- When a consumer's chart is flagged as 42 CFR Part 2, a consent is required for individual providers who may need access to the record who are not contracted **directly** with a CMHSP (i.e staffing agency).

MDHHS Standard Consent Form **CANNOT** be used for the following:

- To share psychotherapy notes (as defined by federal law - 45 CFR 164.501) or information for marketing purposes; must use a HIPAA compliant consent in compliance with 45 CFR 164.508(a)(2) and (3)
- Release of information pertaining to HIV infection or acquired immunodeficiency syndrome (unless by court order or subpoena as defined in the Public Health Code – Section 333.5131)
- For a release from any person or agency that has provided services for domestic violence, sexual assault, stalking, or other crimes. Programs that receive funding from the Violence Against Women Act (FAWA) or the Family Violence Prevention and Services Act (FVPSA) have additional confidentiality restrictions and a specific consent is required. A template can be found at: <https://nnedv.org/mdocs-posts/template-release-of-information-form/>

PURPOSE

To ensure that NorthCare Network is in compliance with the MDHHS, Medicaid Managed Specialty Supports and Services Contract regarding the use and acceptance of the current MDHHS Standard Release Form (MDHHS-5515) and to provide guidance to the region regarding consents.

Michigan Public Act 129 of 2014 mandated that MDHHS develop a standard release form for exchanging and sharing confidential mental health and substance use disorder information for use by public and private agencies, departments, corporations, or individuals that are involved with treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability, or substance use disorder.

DEFINITIONS

Authorization – synonymous with “Consent” and “Release of Information”.

Consent - means a written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute a consent, or for mental health records a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

Behavioral Health Services – a general term that encompasses the promotion of emotional health; the prevention of mental illnesses and substance use disorders; and treatments and services for mental and/or substance use disorders. (SAMHSA)

Coordination of Care – A set of activities to ensure needed, appropriate and cost-effective care for beneficiaries. As a component of overall care management care coordination activities focus on ensuring timely information, communication, and collaboration across a care team and between Responsible Plans. Major priorities for care coordination in the context of a care management plan include:

- Outreach and contacts/communication to support patient engagement,
- Conducting screening, record review and documentation as part of Evaluation and Assessment,
- Tracking and facilitating follow-up on lab tests and referrals,
- Care Planning
- Managing transitions of care activities to support continuity of care,
- Address social supports and making linkages to services addressing social determinants of health, and
- Monitoring, Reporting and Documentation.

Direct Administrative Control – 42 CFR Part 2 permits program staff to disclose information to other staff within the program - or to “an entity having direct administrative control over that program” - if the recipient needs the information in connection with duties that arise out of the provision of substance use disorder diagnosis, treatment or referral for treatment. Minimum necessary and need to know standards apply. *(Legal opinion from October 2019 includes communication between an entity who has direct administrative control over a Part 2 Program.)*

Integrated Care Organization (ICO) – A Health Insuring Corporation (HIC) contracted with MDHHS (Michigan Department of Health and Human Services) and CMS (Centers for Medicare and Medicaid) to comprehensively manage the full continuum of Medicare and Medicaid benefits for Medicare-Medicaid Enrollees including Long Term Supports and Services as needed and desired by the enrollee. The Upper Peninsula has one ICO which is the Upper Peninsula Health Plan (UPHP).

Mental Health (SAMHSA) - A state of well-being in which an individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.

Payment - Activities undertaken by (1) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (2) A health care provider or health plan to provide reimbursement for the provision of health care.

Psychotherapy Notes - means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record.

Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date. (45 CFR 164.501)

Substance Use Disorder (MDHHS Contract) - The taking of alcohol or other drugs as dosages that place an individual's social, economic, psychological, and physical welfare in potential hazard or to the extent that an individual loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare, or a combination thereof.

Treatment - The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or referral of a patient for health care from one health care provider to another.

REFERENCES

1. MDHHS/PIHP Contract, as amended
https://www.michigan.gov/mdhhs/0,5885,7-339-71550_2941_4868_4899---,00.html
2. Michigan Mental Health Code, Sections 330-1261, 330-1262 and 330-1263
3. MDHHS-5515 Consent to Share Behavioral Health Information Form and Information
https://www.michigan.gov/mdhhs/0,5885,7-339-71550_2941_58005-343686--,00.html
4. Public Act 129 of 2014
5. Public Health Code – Section 333.5131
6. Mental Health Code - Section 330.1141a
7. Public Act 559 of 2016
8. Code of Federal Regulation – Title 45 - Section 164.501
9. 42 CFR Part 2
10. Altarum – The Protected Health Information (PHI) Consent Tool
https://www.michigan.gov/documents/mdhhs/Doc_1_PHIConsentTOOL_9-2019_665081_7.pdf

HISTORY

Previously part of Coordination Communication Consent to Share Information Policy

NEW POLICY: 2/4/20

REVISION DATE: 11/17/20, 7/18/22

REVIEW DATE: 11/17/20, 9/23/21, 7/18/22

CEO APPROVAL DATE: 2/4/20, 1/5/21, 10/5/21, 8/2/22

BOARD APPROVAL DATE: 2/12/20

PROCEDURES

MINIMUM NECESSARY: A key protection of the HIPAA Privacy Rule, is derived from confidentiality codes and practices in common use today. It is based on sound current practice that protected health information should not be used or disclosed when it is not

necessary to satisfy a particular purpose or carry out a function. The minimum necessary standard requires covered entities to evaluate their practices and enhance safeguards as needed to limit unnecessary or inappropriate access to and disclosure of protected health information. The Privacy Rule’s requirements for minimum necessary are designed to be sufficiently flexible to accommodate the various circumstances of any covered entity. Minimum necessary does not apply to (It is always best to check the regulations in these circumstances or with the compliance department):

- 1) Disclosures to or requests by a health care provider for treatment. **NOTE:** *It is recommended to verify exactly what the provider is asking for before sending an “entire” record.*
- 2) Uses or disclosures made to the individual.
- 3) Uses or disclosures made pursuant to an authorization under 45 CFR 164.508.
- 4) Disclosures made to the Secretary regarding compliance and investigations under 45 CFR Part 160.
- 5) Uses or disclosures that are required by law, as described by 45 CFR 164.512(a); and from a business associate that is a sub-contractor.
- 6) Uses or disclosures that are required for compliance with applicable requirements of 45 CFR.

NEED TO KNOW: Protected Health Information is only to be released to individuals who need to have access to the information to perform their job function.

This is not an exhaustive list of all agencies or circumstances.

| DOES NOT Require Consumer Consent to Disclose Information | | | REQUIRES Consumer Consent to Disclose Information |
|---|---|--|---|
| Treatment | Payment | Coordination of Care | |
| The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or referral of a patient for health care from one health care provider to another. | Activities undertaken by (1) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (2) A health care provider or health plan to provide reimbursement for the provision of health care. | A set of activities designed to ensure needed, appropriate and cost-effective care for beneficiaries. As a component of overall care management, care coordination activities focus on ensuring timely information, communication, and collaboration across a care team and between Responsible Plans. | |
| Contracted Treatment Providers | DHHS-for Medicaid/ Financial Assistance Reasons | CMHP, PIHP, Health Plans and Health Plan Providers involved in a care team around a specific consumer | Referrals and/or treatment for substance use disorder |
| Primary Care Physicians | Payment to Providers | Contracted Treatment Providers | Natural Supports: Family, Spouse, Friends, Partners, etc. |
| Physical Health Care Specialists | Contracted Providers | Primary Care Physicians | Employers |

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| Hospitals/Urgent Care/Labs -Medical and Psychiatric | BCBS/other 3rd party payor reviews | Physical Health Care Specialist | Schools (including ISD) |
| Persons/Providers as required under Alternative Treatment Order (ATO) | Any insurance companies related to payment for services | Hospitals/Urgent Care/Labs -Medical and Psychiatric | Law Enforcement (i.e. Probation Officer) outside of court ordered treatment or a court order |
| Jail for medications & aftercare coordination | Social Security | DHHS Housing/Food/Other Benefits Assistance | Landlord/Housing |
| Pharmacies | Non-Contracted Treatment Providers | Veteran's Administration | Non-Contracted Treatment Providers |
| DHHS as guardian (consumer is ward of the court/ward of the State) | Veteran's Administration | | DHHS as guardian (consumer is ward of the court/ward of the State) |
| Office of Inspector General (OIG) for active investigations | | | Foster Care Parents/Step Parent |
| DHHS-CPS/APS for active investigations (does not include SUD) | | | Fair Hearing Representatives |
| LARA (Licensing)-for active investigation | | | DHHS Foster Care Workers (UNLESS child is a ward of the state & worker has legal rights, or there is open CPS/APS case, or DHHS has legal custody) |
| Michigan Protection & Advocacy (MPAS) | | | Mental Health Court/Drug Court/Veterans Court |
| | | | Coroner/Medical Examiner |
| | | | Guardian Ad Litem |
| | | | Court Appointed Special Advocate (CASA) |
| | | | Ombudsman |
| | | | Clergy |
| | | | MDHHS – CPS/APS for active investigation (SUD consumers only) |
| | | | Pharmaceutical Advocates |
| | | | Probation Officer |
| | | | Attorneys |

RE-DISCLOSURES

When information is disclosed through consent, the information may only be re-disclosed under the following circumstances:

1. Mental Health Records – The Michigan Mental Health Code requires that an individual who receives mental health records shall disclose the records to others “only to the extent consistent with the authorized purpose for which the information was obtained”. (MCL 333.1748)

2. Substance Use Disorder Records - Federal law generally prohibits the re-disclosure of substance use disorder information unless the re-disclosure is expressly permitted by the written consent. Federal law requires that a specific notice regarding re-disclosure accompany any disclosure of substance use disorder information that is shared with the individual's written consent. (42 CFR, Part 2.32) Required re-disclosure statement is: *This record which has been disclosed to you is protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of this record unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed in this record or, is otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65.*

REVOCAION OF CONSENT

1. An individual may withdraw his/her consent verbally or in writing. A copy of the withdrawal must be kept in the individual's records and a copy provided to the individual if withdrawal is in writing. It is the individual's responsibility to notify all providers and organizations listed on the form that consent has been withdrawn and mental health providers are encouraged to assist the individual with this notification.
2. If an individual withdraws consent verbally, the entity must document the time, place and manner of the withdrawal in the individual's record. A verbal withdrawal can be made only by the individual and not an individual's guardian.
3. If an individual wants to revoke the consent for one or more parties to the consent, but not all parties, the entire consent should be revoked, and a new consent be completed.