



24.03 OPERATING POLICY & PROCEDURE

Subject: Confidentiality and Release of Information		Application: All Departments
First Effective 8/15/94	Revised 1/30/2023	Reviewed 1/17/2024

PURPOSE

To serve as a guide to assure compliance with Federal and State rules/regulations and Board policy regarding confidentiality, disclosure, and release of customer information.

DEFINITIONS

Confidential Information

All information in the record of a recipient and all other information acquired in the course of providing mental health services to a recipient.

Customer or Recipient

As used in this policy and procedure, a customer or recipient is a person for whom a clinical record has been established or for whom other PHI has been acquired.

Protected Health Information (PHI)

- A. Any information whether oral or recorded in any form or medium that:
1. Is created or received by Pivotal.
 2. Relates to the past, present or future physical or mental health or condition of an individual; or the past, present or future payment for the provision of health care to an individual.
 3. Identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual.

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.

POLICY

- A. A summary of section 1748 of the Mental Health Code will be made part of each recipient file.
- B. All customer information obtained during the course of providing services and information contained in reports, records or communications of Pivotal programs shall be considered confidential including:
1. Information acquired in diagnostic interviews or examination.
 2. Results and interpretations of test(s) ordered by a mental health professional or given by a facility.

3. Entries and progress notes by mental health professionals and support staff.
- C. Unauthorized disclosure of such information by an employee shall be considered sufficient grounds for dismissal.
 - D. Pivotal will not release records, data and knowledge collected for or by individuals or committees assigned a peer review function. All information is confidential and shall be used only for the purposes of peer review. It is not public record and is not subject to court subpoena.

PROCEDURE

- A. All records will be stored electronically.
- B. Minimum Necessary Standard:
Reasonable efforts will be made to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.
- C. When requested, confidential information shall be disclosed only under one or more of the following circumstances:
 1. Pursuant to an order or a subpoena of a court of record or a subpoena of the legislature, for non-privileged information.
 2. To a prosecutor as necessary for the prosecutor to participate in a proceeding governed by the Mental Health Code.
 3. To the recipient's attorney with the recipient's consent, recipient's guardian with authority to consent, or the parent with legal and physical custody of a minor recipient. Attorneys representing recipients may review records only upon presentation of identification and the recipient's consent or a release executed by the parent or guardian shall be permitted to review the record on the provider's premises.
 4. An attorney who has been retained or appointed to represent a minor pursuant to an objection to hospitalization of a minor.
 5. When necessary to comply with another provision of law.
 6. To the office of the auditor general if the information is necessary for that office to discharge its constitutional responsibility.
 7. To DHHS when necessary in order for the department to discharge a responsibility placed upon it by law.
 8. To a surviving spouse, or if none, closest relative of the recipient in order to apply for and receive benefits, but only if spouse or closest relative has been designated the personal representative or has a court order. [45CFR164.501(g)(4)]
- D. Disclosure of confidential information may be delayed (except if disclosure is pursuant to 1-5 proceeding) if:
 1. There is substantial and documented reason to believe that disclosure would be detrimental to the recipient or other.
 2. If the recipient, legally empowered guardian or parents of a minor child request the information not to be released or decline consent to release information.
 3. For case record entries made after March 28, 1996, information made confidentially by this section 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 thirty (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.

4. To allow the director of the provider to review the request and make a determination within 3 business days if record is on-site or 10 business days if record is off-site whether the disclosure would be detrimental to the recipient or others.

E. A record shall be kept of all disclosures and shall minimally include the following:

1. What information was released?
2. To whom it was released.
3. The specific need and purpose for which the disclosure was to be used.
4. The subsection of Section 330.1748, or other state law, under which the disclosure was made.
5. A statement that the persons receiving the disclosed information were informed that further disclosure shall be consistent with the authorized purpose for which it was released.
6. A statement indicating how disclosed information is germane to the stated purpose.

F. The holder of a record shall not decline to disclose information if a recipient or other empowered representative has consented, except for a documented reason. If a holder declines to disclose, there shall be a determination whether part of the information can be released without detriment.

G. Detriment

Unless section 330.1748 of the Michigan Mental Health Code applies to the request for information, the director of the provider may make a determination that disclosure of information may be detrimental to the recipient or others. If the Executive Director declines to disclose information because of possible detriment to the recipient or others, the director 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 the record of the recipient is located at the facility, then the director shall make a determination of detriment within 3 business days from the date of the request. The director shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information. If a determination of detriment has been made and the person seeking the disclosure disagrees with that decision, he or she may file a recipient rights complaint.

H. Exceptions to Confidentiality

Any customer information is strictly confidential and may be release in accordance with the Release of Information Procedure or under the following exemptions:

1. Duty to Warn: In a situation that involves "substantial probability of harm" as determined by the clinician confidentiality will be waived and the appropriate agencies or individuals notified.
2. Child Abuse/Vulnerable Adult: In a situation that involves reasonable cause to suspect child/vulnerable adult abuse, staff shall immediately make or cause to be made, a report of the suspected criminal abuse to the local law enforcement agency (for the county or city in which the abuse is suspected to have occurred), Adult Protective Services, Child Protective Services, and state police when appropriate. Within 72 hours, the reporting employee shall file a written report with the same local law enforcement agency, Adult Protective Services, Child Protective Services, state police and the Recipient Rights Officer.

I. Cases for Special Consideration

1. Substance abuse records are protected under Federal statute that requires the individual to specifically state on a disclosure that these records may be released. When the record also

- contains substance abuse information, including Co-occurring Services, the requirements in policy 26.02 (Release and Disclosure of Substance Abuse Information) must also be applied.
2. HIV, AIDS, ARC records, including the fact an individual has been tested for these conditions or any reference to these conditions, are protected by State statute. The release must be specifically state that this information may be released.

J. Release of Information

The following procedures are to be followed when a request for release of information, court order or subpoena is received.

1. All requests, court orders and subpoenas received by any staff member will be forwarded to support staff who maintain medical records.
2. The support staff will determine whether the request for information, subpoena or court order is valid and contains all necessary elements. Questions or concerns will be addressed with the Recipient Rights Officer and/or Clinical Director.
3. Information will be provided to attorneys, other than prosecuting attorneys who are retained or appointed by a court to represent a recipient and present identification and a consent or release and who do not represent recipient when they present a certified copy of order for court directing disclosure.
4. Information shall be provided to private physicians or psychologists appointed by the court or retained to testify in civil, criminal or administrative proceedings. A physician or psychologist shall be notified before the review of records when the records contain privileged communication which cannot be disclosed in court. Privileged information shall not be disclosed unless disclosure is permitted because of an express waiver of privilege or by law which permits or requires disclosure.
5. A prosecutor may be given non-privileged information 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 of the governing body.
6. Pivotal will disclose information that enables a 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 state or shall be subject to collection for liability for mental health services.
7. If the subpoena or court order is not valid, a letter will be sent to the attorney or person requesting the information informing them of the reasons why the document is not valid.
8. When a request is made to release a family file by a family member of subpoena, a consent form must be signed by each family member. Parent signature(s) will be sufficient for family files if the children are under 14 for mental health cases.
9. If the support staff processing a request has any questions regarding this procedure or Section 748/750 of the Mental Health Code should be directed to the Corporate Compliance Officer, Recipient Rights Officer, or the Executive Director.

K. General Release of Information

1. The request for release of information can only be processed if a valid consent form is received unless the request for information is initiated by the MDHHS under specific circumstances (see item 2). The consent form must include:
 - a. The person or agency to whom disclosure is to be made.
 - b. The purpose of the release of information.
 - c. The specific information requested.
 - d. A signature from the customer, legal guardian or the parent of a customer less than 18 years of age.
 - e. The date the release was signed (this date must be within the last 12 months).

- f. The period of time for which the release is valid. This time period may not extend for longer than 12 months.
 - g. The signature of a witness.
 - h. The part of the law under which disclosure is made.
2. 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 family independence agency 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.
 - a. 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.
 - b. If necessary, the support staff will contact the FIA worker to determine what information would be relevant to the investigation.
 - c. Within 14 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.
- L. Record Review/Photocopying of Adult Customer's Information by Customer or Authorized Party
1. 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. Release is done as expeditiously as possible but no later than 30 days of the request or prior to release from treatment.
 2. Except as noted above, if a request for information has been delayed, the Executive Director 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 whether the disclosure would be detrimental. Written notification of the determination of detriment and justification for that determination shall be provided to the requestor. This determination can be appealed to ORR by the person seeking disclosure.
 3. Except as otherwise noted above, the holder of the record shall not decline to disclose information if an individual or other empowered representative has consented, except for a documented reason. If a holder declines to disclose for a documented reason, there shall be a determination whether part of the information can be released without detriment.
 4. When an adult individual requests reviewing or photocopying of his/her clinical record, the following will occur:
 - a. The request will be written (assistance will be provided if the authorized party is unable to write). The documentation will be filed under the legal information tab of the record.
 - b. An appointment time for the review will be scheduled within a reasonable time not to exceed 10 working days.
 5. An individual, after having gained access to his/her own clinical record, may challenge the accuracy, completeness, timeliness or relevance of the factual information in the record. The recipient will be permitted to insert into the record a statement correcting or amending the information at issue. The statement will become part of the record.
 6. There will be no charge for records provided to health care providers for continued care and treatment.
 7. There will be no charge to Federal agencies (unless a voucher is provided for a fee payment), Social Service Agencies, Medicare, Medicaid, insurance carriers, attorney

representing the agency, the agency's insurance carrier, probation department, welfare department and schools.

8. Individuals will be provided one copy of their information at no charge. Charges for additional requests for copies will be consistent with charges made for requests made under the Freedom of Information Act.

M. Subpoena

1. The validity of the subpoena should be checked to ensure that it included the following elements:
 - a. Properly identified customer name.
 - b. Signature of the attorney or county clerk. (This signature may be rubber stamped, typed or printed.)
 - c. Title of court in which the matter is pending.
 - d. Title of action in which the person is expected to testify.
 - e. Case Number assigned by the court.
2. The subpoena must be served at least 2 days prior to the Trial deposition.
3. The following items must accompany the subpoena:
 - a. A properly executed consent. It must include the name of the person to whom disclosure is to be made.
 - b. The purpose of the information requested by the subpoena.
 - c. The specific information requested.
 - d. A signature from the customer, legal guardian or parent if the child is less than 18 years old.
 - e. The date of the subpoena.
 - f. The signature of one witness.
4. If the request for records is for the release of the entire record to another health provider, the agency will send the entire medical record except those held confidential by another area of law. Pivotal will not release records, data and knowledge collected for or by individuals or committees assigned a peer review function. This information is confidential and shall be used only for the purposes of peer review. It is not public record and is not subject to court subpoena.
5. Witness fees and mileage (payment for the services of the clinician as and expert witness and their travel expenses) should also accompany the subpoena.
6. All information in a customer file is released with a valid subpoena except for the following:
 - a. Documents from other medical/mental health professionals and hospitals (both private and state hospitals) stamped as confidential.
7. If the party submitting the subpoena has failed to comply with any of the above requirements for the proper release of information, they will be notified, which will specify the reason(s) why the request cannot be processed.

N. Court Order

1. The validity of the court order shall be checked to ensure that it includes the following elements:
 - a. Properly identified customer name.
 - b. Signature by the county clerk. (This signature may be rubber stamped, typed, or printed.
 - c. Title of court in which the matter is pending.
 - d. Title of action in which the person is expected to testify.
 - e. Case number assigned by the court.

2. All information in a customer file is released with a valid court order except documents from other medical/mental health professionals and hospitals (both private and state hospitals) stamped confidential.
3. Materials/information requested by the court order which is deemed damaging to the customer as determined by the primary provider must be sent: however, the court should be made aware of the damaging content in a cover letter accompanying the information.
4. Materials deleted (based on item 2 above) must be listed in the cover letter as missing documents with the reason(s) given for deleting this information.
5. Once the primary provider has reviewed the file and completed the cover letter, the file and letter will be returned to the support staff to release the information and bill for the file search and copies, and completion of record release form stating purpose, to whom disclosure was made, and applicable law with a statement materials are to be used for the stated purpose and may not be further disclosed or copied.

O. Disability Rights of Michigan

Representatives of Disability Rights of Michigan will be given access to customer information if:

1. An individual, including an individual who has died or whose whereabouts are unknown, if all of the following apply:
 - a. Because of a mental or physical condition, the individual is unable to consent to the access.
 - b. The individual does not have a guardian or other legal representative, or the individual's guardian is the state.
 - c. The Disability Rights system has received a complaint on behalf of the individual or has probable cause to believe based on monitoring or other evidence, that the individual has been subject to abuse or neglect.
2. **An individual** who has a guardian or other legal representative, if all of the following apply:
 - a. A complaint has been received by the Disability Rights system or there is probable cause to believe the health and safety of an individual is in serious and immediate jeopardy.
 - b. Upon receipt of the name and address of the individual's legal representative, the Disability Rights system has contacted the representative and offered assistance in resolving the situation.
 - c. The representative has failed or refused to act on behalf of the individual.
3. Pivotal's Executive Director or designee must make a determination based on professional judgment that it is reasonable to believe that the recipient is or has been subjected to abuse or neglect.
4. The disclosure will be limited to relevant information expressly authorized by statute or regulation and recorded as provided in this policy.

P. Disclosure of Information for Purposes of Research

- A. PHI may be used for purposes of Research only when:
 1. Authorized by the individual.
 2. A waiver of authorization is obtained by an Institutional Review Board (IRB) or Privacy Board established according to Federal Regulation and the Executive Director approves the research.
- B. When a waiver of authorization is presented, it must include identification of the IRB or Privacy Board and a statement that the following waiver criteria are met:
 1. The use or disclosure involves no more than minimal risk to the individual based on an adequate plan to protect identifiers from improper use, a plan to destroy identifiers at the earliest opportunity, unless there is a health or research purpose for retaining or retention is required by law, and adequate written assurance that the information will not

be reused or disclosed to any other person except as required by, for oversight of the research or for other research for which use or disclosure would be permitted.

2. The research could not be practicably conducted without the waiver.
3. The research could not be practicably conducted without the PHI.

REFERENCES

- Public Act 258 of 1974 (Michigan Mental Health Code) supplemented through Act 152 of 1996. Sections 746, 748, and 749
- 42 CFR, Part 160 and 164
- Michigan Medical Record Confidentiality, 1998

EXHIBIT

- [24.03A Consent to Share BH Info for Care Coord](#)