

NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS

POLICY TITLE: Confidentiality & Disclosure Policy/Procedure

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MANUAL: Recipient Rights

SECTION: Recipient Rights

ORIGINAL EFFECTIVE DATE: 10/1/03

BOARD APPROVAL DATE: 11/25/13

REVIEWED/REVISED ON DATE: 3/15/18

CURRENT EFFECTIVE DATE: 4/1/18

REVISIONS TO POLICY STATEMENT: YES NO **OTHER REVISIONS:** YES NO

APPLIES TO:

Northpointe employees, committee members, board members, students, volunteers (hereinafter referred to as Northpointe Personnel).

POLICY:

Northpointe Personnel shall preserve the confidentiality and privacy of Protected Health Information (PHI). In the use and disclosure of PHI, Northpointe will comply with all legal, ethical, and accreditation standards.

PURPOSE:

To establish a policy regarding confidentiality and disclosure of service recipient information according to applicable laws.

DEFINITIONS:

Closest Relative

The surviving spouse, or if there is no surviving spouse, the individual or individuals most closely related to the deceased recipient within the third degree on consanguinity as defined in civil law.

Confidential Information

- A. All information in the record of a recipient including, but not limited to:
1. Information acquired in diagnostic interviews or examinations;
 2. Results and interpretations of tests ordered by a mental health professional or given by a facility;
 3. Entries and progress notes by mental health professionals and supporting personnel;
- B. All other information acquired in the course of providing mental health services to a recipient.

Disclosure

The release of confidential information outside Northpointe and its contract agencies.

Holder of the Record

The Chief Executive Officer of Northpointe or other staff designated to perform job responsibilities related to disclosing confidential information.

Primary Clinician

The clinical staff member in charge of implementing a recipient's plan of service.

Staff

Employees, volunteers, trainees, and contract employees.

STANDARDS:

A. Internal Confidentiality

Internal access to confidential information shall be limited to that staffs 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 recipient, or staff performing approved peer review, professional consultation, investigation, supervisory, or clinical records functions. No consent is required for internal access by authorized staff.

B. Disclosures – General Information

1. All disclosures shall be consistent with Sections 748 and 750 of the Mental Health Code and with Agency standards.
2. Requests for confidential information shall be directed to clinical records staff, or to the authorized supports coordinators 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 handled in accordance with Section 748 and Agency standards.

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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 subpoenas of the legislature, 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 Mental Health Code if it is either:
 - 1) Non-privileged information or;
 - 2) Privileged information disclosed pursuant to Section 750(2), including:
 - i) Names of witnesses to acts which support the criteria for involuntary admission;
 - ii) Information relevant to alternatives to admission to a hospital or facility;
 - iii) Other information designated in Northpointe policies.
 - 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. If necessary in order to comply with another provision of law;
 - e. 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. Upon a written notice from Child Protective Services, pertinent records will be provided within 14 days of the request.
 - f. To the office of the auditor general if the information is necessary for that office to discharge its constitutional responsibility;
 - g. 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;
 - h. To an adult recipient if all of the following apply:
 - 1) A request has been received from the recipient;
 - 2) The recipient does not have a guardian and has not been adjudicated legally incompetent;
 - 3) The case entry was made after March 28, 1996.
2. The holder of the record 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, which 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 the court-appointed personal representative or executor of the estate of a deceased recipient, confidential information may be disclosed to all of the following:
 - a. Providers of mental health services to the recipient;
 - b. The recipient or 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.

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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 – Detrimental Information

1. For case record entries made subsequent to March 28, 1996, information made confidential by Sec. 748 of the Mental Health Code 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 information shall be disclosed 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, before the recipient is released from treatment. This information may not be withheld even if the holder of the record judges it would be detrimental to the recipient or others.
2. Unless the above applies to a request for information, the holder of the record may make a determination that disclosure of information may be detrimental to the recipient or others, decline to disclose the information, and determine whether part of the information may be released without detriment. A determination of detriment shall not be made if the benefit of disclosing the information to the recipient outweighs the detriment. The holder of the record shall make a determination of detriment within three business days if the record is onsite and within ten business days if the record is offsite. The primary clinician will be consulted in making any determination of detriment. The holder of the record shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information, including notification that the individual may appeal the decision to the Chief Executive Officer or file a rights complaint.
3. If an individual does not receive requested information because of a determination of detriment or any other reason, he or she may file a recipient rights complaint.
4. Review for Detriment Process - If a review of detriment is appropriate then the authorized clinician in conjunction with his or her clinical supervisor will perform such review under the following guidelines.
 - a. Authorized clinician has determined in the exercise of professional judgment that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person.
 - b. The Protected Health Information (PHI) makes reference to another person and the authorized clinician has determined in the exercised professional judgment that the access requested is reasonably likely to cause substantial harm to such other person.
 - c. Request for access is made by the individual's personal representative and the authorized clinician in the exercise of professional judgment has determined that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

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- d. In all cases a determination of detriment shall not be made if the benefit to the recipient from the disclosure outweighs the detriment.
5. Authorization by the Executive Director.
The authorized clinician will send a written statement to the Executive Director outlining what information is to be withheld and why. The Executive Director will make the final 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 of others.
6. Implementation and Process for Denial of Access - If Northpointe denies access in whole or in part, Northpointe must, to the extent possible, give the individual access to any other PHI requested after excluding the PHI which has been denied.
7. Request for Review of Denial of Access.
 - a. All requests for review of denial of access shall be forwarded to the rights office/privacy officer.
 - b. The rights office/privacy officer will ensure that a licensed health care professional who is not directly involved in the denial shall promptly provide a second opinion of the denial of access.
 - c. The licensed health care professional must determine within a reasonable period of time, not to exceed 10 business days, whether or not to uphold the denial of access. The licensed health care professional shall promptly inform the recipient of the decision in writing.
 - d. If the recipient is not satisfied with the final determination he or she can file a complaint with the office of the recipient rights.

F. Disclosures – Protection and Advocacy

An identified representative of Michigan Protection and Advocacy Services shall be granted access to records in accordance with Public Law 94-103, 89 Stat. 486, Public Law 99-319, 100 Stat. 478, and Act 258 of the Public Acts of 1974, as amended. This includes:

A recipient, if 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;

1. 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. Michigan Protection and Advocacy 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 subjected to abuse or neglect.
2. A recipient who has a guardian or other legal guardian if all of the following apply:
 - a. A complaint has been received by Michigan Protection and Advocacy 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, Michigan Protection and Advocacy 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 – Protective Services

1. Staff shall report suspected abuse or neglect to Protective Services in accordance with Act 238 of the Public Acts of 1975 and Act 519 of the Public Acts of 1982.

2. Per Senate Bill No. 1225 Sec. 748a:

A) 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 Michigan Department of Health and Human services case worker or administrator

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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 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 case worker or administrator directly involved in the child abuse or neglect investigation. The recipient must be promptly informed that such a report has been or will be made, except if:

- Northpointe, in the exercise of professional judgment, believes informing the recipient would place the recipient at risk of serious harm or;
- Northpointe would be informing a personal representative, and Northpointe reasonably believes the personal representative is responsible for the abuse, neglect, or other injury and that informing such person would not be in the best interest of the individual as determined by Northpointe in the exercise of professional judgment.

B) The following privileges do not apply to mental health records or information to which access is given under the section:

- (1) The physician-patient privilege created in section 2157 of the revised judicature act of 1961. 1961 PA 236. MCL600.2157.
- (2) The dentist-patient privilege created in section 16648 of the public health code. 1978 PA 368. MCL 333.16648.
- (3) The licensed professional counselor-client and limited licensed counselor-client privilege created in section 18117 of the public health code. 1978 PA 368 MCL 333.18117.
- (4) The psychologist-patient privilege created in section 18237 of the public health code. 1978 PA 368. MCL 333.18237.
- (5) Any other health professional-patient privilege created or recognized by law.

C) To the extent not protected by the immunity conferred by 1964 PA 170.MCL691.1401 to 691.1415, an individual who in good faith gives 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.

D) A duty under this act relating to child abuse or neglect does not alter a duty imposed under another statute, including the child protection law. 1975 PA 238 MCL 722.621 to 722.638, regarding the reporting or investigation of child abuse or neglect.

H. Peer Review

The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, including reviewing the quality and appropriateness of services, shall be used only for peer review, are not public records, and are not subject to court subpoena.

I. Statement Correcting 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 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

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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 Northpointe, the recipient's record. An attorney who has been retained or appointed to represent a minor pursuant to an objection to 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. 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, at Northpointe, a record containing information concerning the recipient. Physicians or psychologists shall be notified before the review of records when the records contain privileged communication which cannot be disclosed in court under Section 750;
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 or privilege or because of other conditions which, by law, permit or require disclosure.

L. Providing Information to a Prosecuting Attorney

A prosecutor may be given non-privileged information or privileged information which may be disclosed pursuant to Section 750 of the Mental Health Code 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 Northpointe policies.

There are additional protections to those receiving substance abuse treatments. Refer to 42 CFR Part 2 Policy.

PROCEDURES:

A. Summary of Section 748

A summary of Section 748 of the Mental Health Code shall be in each recipient record at the time it is opened.

B. Disclosures

1. Clinical records staff/authorized supports coordinators who disclose clinical record information shall ensure that the identity of the individual and any other information is not disclosed unless it is essential to the purpose.
2. Clinical records staff/authorized supports coordinators will keep a record of all disclosures which includes:
 - a. Information released;
 - b. To whom it is released;
 - c. The purpose stated by the person requesting the information;
 - d. A statement indicating how the disclosed information is germane to the stated purpose;
 - e. The subsection of Section 748 of the Mental Health Code, or other applicable law, under which a disclosure was made;
 - f. A statement stamped on the information that the individual receiving confidential information shall disclose the information to others only to the extent consistent with the authorized purpose for which

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the information was obtained and in accordance with Section 748.

3. When information is to be disclosed without identifying the name of the recipient, clinical records staff/authorized supports coordinators will block out the recipient's name.
4. Clinical records staff/authorized supports coordinators will safeguard confidential information against unwarranted identification, including inspecting or sampling of information.
5. When disclosure is appropriate, clinical records staff/authorized supports coordinators will provide copies to authorized receivers stamped with the non-disclosure information.
6. When information is being requested for outside research, evaluation, accreditation, or statistical compilation, the primary clinician will determine whether such disclosure is appropriate for that recipient and will determine whether the recipient's identity may be disclosed.
7. The primary clinician will determine when identification would be harmful to a recipient.

CROSS REFERENCES:

- Act 258 of the Public Acts of 1974, as amended (Mental Health Code) Sections 748, 749, 750, 931
- Act 238 of the Public Acts of 1975, as amended (Child Protection Law)
- Act 519 of the Public Acts of 1982, as amended (Adult Protection Law)
- Public Law 94-103, 89 Stat. 486
- Public Law 99-319, 100 Stat. 478
- Michigan Department of Health and Human Services Administrative Rule 7051
- Michigan Attorney General Opinion 6700
- Appropriate NBHS Policies
- 42 CFR Part 2