

## NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS

**POLICY TITLE:** Substance Abuse 42 C.F.R., Part 2

**MANUAL:** Recipient Rights

**ORIGINAL EFFECTIVE DATE:** 5/1/08

**REVIEWED/REVISED ON DATE:** 3/15/18

**REVISIONS TO POLICY STATEMENT:**  YES  NO

**PAGE:** 1 of 3

**SECTION:** Rights

**BOARD APPROVAL DATE:** 11/25/13

**CURRENT EFFECTIVE DATE:** 4/1/18

**OTHER REVISIONS:**  YES  NO

### **APPLIES TO:**

This policy applies to all Northpointe employees, volunteers, student interns, and persons under contract with Northpointe.

### **POLICY:**

All individuals receiving substance use services will have their rights protected in accordance with applicable state and federal laws and regulations.

### **PURPOSE:**

To establish policy regarding confidentiality of substance use disorder records and disclosure of information, according to applicable laws. For the purpose of this policy, reference can be made to the 2006 Edition of Confidentiality and Communication, A Guide to the Federal Drug and Alcohol Confidentiality Law and HIPAA by the Legal Action Center. The information below contains excerpts from this manual. More detail is available in the manual.

### **DEFINITIONS:**

Both HIPAA and 42 CFR, Part 2 protect service recipient identifying information. Under 42 CFR, Part 2 this is information that would identify them as someone who has received alcohol or drug treatment services, either directly or indirectly. This includes any information, whether oral or written that would directly or indirectly reveal a person's status as a current or former service recipient. Records protected from unauthorized disclosure include any information acquired about an individual – including identity, address, medical or treatment information, and all communications made to program staff – whether it is in writing or is recorded in some other form.

42 CFR, Part 2 protects “service recipients” who have applied for, participated in, or received an interview, counseling, or any other service from a federally assisted or drug abuse program, including someone who, after arrest on a criminal charge, is identified as an alcohol or drug patient during an evaluation of eligibility for treatment.

HIPAA protects any health information that identifies an individual, while 42 CFR, Part 2 only protects information that identifies an individual as being a patient in a drug or alcohol abuse program or as having a drug or alcohol problem. It is possible for some information, i.e. that which does not include drug/alcohol info, to only be protected by HIPAA and not by 42 CFR, Part 2.

**HIV** – Human Immunodeficiency Virus

**ARC** – Aids Related Complex

**AIDS** – Acquired Immunodeficiency Syndrome

### **STANDARDS:**

1. Internal Confidentiality. Internal access to confidential information shall be limited to those staff that has a need to know that specific information to perform their assigned job duties. Access shall ordinarily be limited to staff providing services to the individual, or staff performing approved peer review, professional consultation, investigation, supervisory, or clinical records functions.
2. Individuals receiving substance use disorder services must have Release of Information form(s) completed which is 42 CFR compliant. All previous releases are no longer valid.

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3. Most disclosures are permissible if an individual has signed a valid 42 CFR, Part 2 consent form which has not expired or been revoked by the individual. A verbal consent is not allowed. If authorized by consent, a disclosure is allowed even if it may not be in the individual's best interests.
4. The individual may revoke consent at any time. 42 CFR, Part 2 is silent on the issue of whether the revocation can be oral or must be in writing. As a result, drug and alcohol programs honor oral revocation.
5. Under 42 CFR, Part 2, 1) the program must always obtain the minor's consent for disclosures, and cannot rely on the parent's signature instead; and 2) parental consent for disclosure to a third party is required in addition to the minor's only if the program is required by state law to obtain parental permission before providing treatment to a minor. In other words, if parental consent was not required to treat the minor, then parental consent is not required to make disclosures. If it is required, the consent of both the minor service recipient and the parent or guardian is required to make disclosures.
6. Adolescents (14-18 years old): Typically, parents consent to treatment for their child to receive mental health services. This is *not* the case for adolescents receiving substance use disorder treatment. It is recommended that at the onset of mental health services, the adolescent sign releases and consents that are 42 CFR, Part 2 compliant. Otherwise, if the child becomes a participant in co-occurring treatment, the parental consent and releases will no longer be effective.
7. Any disclosure made with written service recipient consent must be accompanied by a written statement that the information is protected by federal law and that the recipient cannot make any further disclosure unless permitted by regulations. Re-disclosure is not allowed unless the individual requests it and signs a valid authorization.
8. Disclosures may be permitted when an individual has a medical condition that poses an immediate threat to the health of an individual or requires immediate medical intervention. In this situation, information may only be disclosed to medical personnel, not family members or "emergency contacts".
9. Under 42 CFR, Part 2, a subpoena, search warrant or arrest warrant, even when it is signed by a judge and labeled a court order, is not sufficient, when standing alone, to require or even permit a program to make a disclosure. If confronted with a subpoena or court order directing the program to produce patient records or testimony about an individual, it is best to seek the advice of legal counsel.
10. Michigan has a duty to warn. This can be done without violation by either obtaining a court order, anonymously or a non-patient identifying report (and must not implicate substance use disorder treatment).
11. If there is suspected Child Abuse and Neglect, the program may comply with State mandatory reporting laws per the following:
  - a. Make an initial report to the state's child abuse hotline
  - b. Provide written confirmation, if required
  - c. Provide nothing more in follow-up investigation, unless provided with individual's written consent or a valid court order.

### **PROCEDURES:**

1. A simple screening tool will be used to determine substance use/co-occurring status. This tool will be implemented within the assessment, both at intake and ongoing in case substance use is discovered during the course of treatment.

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2. A Substance Abuse Disability Designation field (17.03) will be included on the forms so that medical records staff can complete data entry for State reporting. These assessments will have an “HH” modifier attached to it for billing/reporting purposes. If a SA Disability Designation field is indicated, Medical Records staff will do an administrative revocation with date and signature of staff and all existing/prior releases would be revoked. Clinical staff will complete new 42 CFR, Part 2 releases with the individual.
3. A regional Release of Information Form was developed and will be implemented along with this policy.
4. The individual has the right to revoke consent (written/oral). Medical Records or Case Manager can either complete the process online with the individual or print out the ROI and do it manually. Either way the signature page has to be printed to obtain the individual’s signature to be scanned in.
  - a. Online completion: open the ROI that they want to revoke, check the box “Release has been revoked”; enter Revocation Date; enter Revocation Reason. Print the ROI and have the individual sign. Medical Records will scan signature as an attachment to ROI.
  - b. Manual completion: print the selected ROI, have the individual complete the questions above on the paper form, date and sign. Enter info in EMR and give Medical Records the signature page to scan in as an attachment.
  - c. Inform appropriate staff.
5. At Intake, clinical staff will address guidelines for 14-17 year old minors:
  - a. Consent for services and releases signed by both minor and parent
  - b. Minor signs releases to parents
  - c. Minor’s right to revoke releases: Explain to the parents that at some point in the future, if there is not a release from the child, Northpointe may not be able to communicate with them anymore about the child’s treatment.

### **CROSS REFERENCES:**

- 42 CRF, Part 2
- Confidentiality and Communication: A Guide to the Federal Drug & Alcohol Confidentiality Law and HIPAA, 6<sup>th</sup> Ed, New York, NY: Legal Action Center, 2006
- cl.116sa -Authorization for Release of Information, 42, CFR, Part 2
- 17.03 Substance Abuse Disorder/SUD – Disability Designation