

## PATHWAYS CMH

<b>PROCEDURE TITLE:</b> Review for Detriment Procedure – Appendix 10 of Privacy Policy	<b>CATEGORY:</b> Recipient Rights
<b>EFFECTIVE DATE:</b> April 14, 2003	<b>BOARD APPROVAL DATE:</b> April 14, 2003
<b>REVIEWED DATE:</b> June 2013; July 11, 2014; May 5, 2015; April 22, 2016; April 15, 2017	<b>REVISION(S) TO PROCEDURE:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>RESPONSIBLE PARTY/APPROVAL:</b> Recipient Rights Supervisor or Designee/ Mary J. Swift, CEO	

**PURPOSE:**

To protect the rights of recipients.

**PROCEDURES:**

A. Request for Access:

When any request for access is received by the records department, it will be given to the authorized clinician who processes the request. If Pathways does not maintain the PHI that is the subject of the recipient's request and Pathways knows where the requested information is maintained, the recipient or legal representative must be informed where to direct their request for access.

B. Analysis of Consumer Status:

An authorized clinician determines whether the recipient is a competent adult and entitled to receive his or her entire record under Mental Health Code, MCL 330.1748(4) or the recipient is a legally incapacitated adult with a guardian or a minor and a determination of detriment may be made.

C. 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. In all cases a determination of detriment shall not be made if the benefit to the recipient from the disclosure outweighs the detriment.

D. Authorization by the Chief Executive Officer:

The authorized clinician will send a written statement to the Chief Executive Officer outlining what information is to be withheld and why. The Chief Executive Officer will make the final determination.

E. Implementation and Process for Denial of Access:

If Pathways denies access in whole or in part, the following requirements must be complied with:

- a. Pathways must to the extent possible give the individual access to any other PHI requested after excluding the PHI which has been denied.
- b. Pathways must provide a timely written.
- c. The denial must be in plain language and must state that basis for denial.
- d. The denial must also contain a description of how the recipient may complain to the rights office and request a review of the denial from Pathways or CMS.

F. Timeframes:

If the record of the recipient is located at the site where the request is made, the determination of detriment will be made within 3 business days of the request for access. If the record of the recipient is located in another site, the determination of detriment will be made within 10 business days of the request for access.

G. 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.

**REFERENCES:**

Act 258 of the Public Acts of 1974, as amended (Michigan Mental Health Code) Section 748, 748 (a), and 750; 45 CFR Part 164 Section 524.