

PATHWAYS CMH

PROCEDURE TITLE: Confidentiality and Disclosure Procedure Co-Occurring Recipient – Appendix 16 of Privacy Policy	CATEGORY: Recipient Rights
EFFECTIVE DATE: June 2008	BOARD APPROVAL DATE: June 2008
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RESPONSIBLE PARTY/APPROVAL: Recipient Rights Supervisor or Designee/ Mary J. Swift, CEO	

PURPOSE:

To delineate the exceptions to the Pathways' Confidentiality and Disclosure Policy and Procedure for recipients who are identified as co-occurring.

PROCEDURES:

Co-occurring Defined:

A recipient who is diagnosed with a serious mental illness and/or a developmental disability AND a substance use disorder. A recipient with co-occurring disorders is designated in the demographic reporting data on disabilities as both MI (DD) and SUD regardless of whether the substance use disorder is in remission or a focus of current treatment. The entire chart of the consumer shall be protected by the rules in 42CFR Part 2.

Integrated Treatment Program Defined:

An integrated treatment program is defined as those recipients with co-occurring disorders and their service providers. The individual IPOS will establish the treatment team for the individual and those treating providers will be bound by the confidentiality rules of 42CFR Part 2 for all their clinical activities regardless of whether they are responsible for treatment pertaining more to MI issues than SA.

Medical Emergency:

Identifying information may be disclosed to medical personnel who have a need for information about a recipient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

Privacy Procedures Effected:

Confidentiality Policy and Procedure

Notice of Privacy Practices Procedure – Appendix 1

Minimum Necessary Information Procedure – Appendix 3 Authorization Procedure

Authorization – Appendix 4

Court Order or Subpoena of A Court or Administrative Tribunal Procedure – Appendix 7

Duty to Warn – Appendix 8

Disclosures to Protection and Advocacy Policy – Appendix 9

Abuse and Neglect Reporting Procedure – Appendix 11

HIV/AIDS – Appendix 14

Pathways/NorthCare Privacy Practices – Definitions

Business Associates Business Agreement

Standards:

1. Most disclosures are permissible if the recipient or guardian has signed an authorization to release information.
2. The recipient cannot authorize release of the recipient's information if the information is to be used as part of a criminal investigation or prosecution of the recipient. Staff must contact the agency attorney under those circumstances.
3. There are limited exceptions to releasing information without recipient consent. Staff should contact the Office of Recipient Rights or the Records Supervisor if attempting to release recipient information without written consent.
4. Co-occurring records will not be bifurcated between mental health and substance use information. The records will be considered as a whole.

Authorization Requirements:

1. The name or general designation of the program(s) making the disclosure.
2. The name of the individual or organization that will receive the disclosure.
3. The name of the recipient who is the subject of the disclosure.
4. The purpose or need for the disclosure.
5. A description of how much and what kind of information will be disclosed.
6. The recipient's right to revoke the consent.
7. Pathways' ability to condition treatment, payment, enrollment or eligibility of benefits on the recipient agreeing to sign the consent, by stating either the Pathways may not condition services on the recipient signing the consent, or the consequences for the recipient refusing to sign the consent.
8. The date, event or condition upon which the consent expires if not previously revoked.
9. The signature of the recipient, guardian or legal representative.
10. The date on which the consent is signed.
11. The recipient shall receive a copy of the consent.

Written Prohibition on Redisclosure:

1. Any disclosure made with written recipient consent must be accompanied by a written statement that the information disclosed is protected by federal law and that the recipient of the individual or entity receiving the information cannot make any further disclosure.

2. Any oral disclosures must be followed by a written statement regarding the prohibition on redisclosure.
3. The recipient may sign a consent form that authorizes redisclosure of information.

Internal Program Communications:

1. Clinical staff who are identified as part of the co-occurring treatment team shall have access to co-occurring recipient information.
2. Administrative staff who need co-occurring recipient information as part of their specific job duties shall have access to protected information.
3. All staff who are identified as needing protected information regarding co-occurring recipients shall be bound by the requirements of 42CFR2.

Commitment Hearings and Alternative Treatment Orders:

1. Commitment Hearings and Alternative Treatment Orders are an exception to the rule that records will not be bifurcated.
2. Oral testimony about a recipient's mental health diagnosis and treatment may be given at a hearing on commitment or an ATO. Clinical records should not be taken to the court room.
3. No testimony about substance use disorder diagnosis or treatment may be provided at a commitment hearing or a hearing on an alternative treatment order.

Minor Recipients:

1. Pathways must always obtain the minor's consent for disclosures.
2. If the parent with legal custody or guardian must consent to services, the parent and the child must sign the authorization to release information.
3. If the parent with legal custody or guardian does not need to consent to services, the parent with legal custody or guardian cannot receive information about the minor's treatment unless the minor has signed a valid authorization.
4. Pathways may not disclose information about a minor or give access to the minor's records to a guardian ad litem unless the minor signs an authorization or a court of competent jurisdiction issues an order that meets the requirements of 42CFR2.

Mentally Incompetent and Deceased Recipients:

1. Only legally appointed guardians may consent to release of information for recipients of co-occurring services.

2. Pathways will not honor authorizations signed by anyone other than the court appointed guardian or the recipient. Authorizations signed by a personal representative (power of attorney) are not valid for co-occurring recipients.

Medical Emergencies:

1. Immediately following the disclosure, the program shall document the disclosure in the recipient's record, setting forth in writing:
 - a. The name of the medical personnel to whom the disclosure was made and their affiliation with any health care facility.
 - b. The name of the individual making the disclosure.
 - c. The date and time of the disclosure.
 - d. The nature of the emergency.
2. Unless a valid authorization has been obtained, family members of recipients may not be contacted about the emergency.
3. At intake, recipients should be asked to sign an authorization to release information in the event of an emergency.

Court Ordered Disclosures:

1. Pathways will release information to a court only if the court order meets the requirements of 42CFR2.
2. Upon receipt of a court order to release information about a co-occurring recipient, staff shall contact the agency attorney or the Office of Recipient Rights.

Subpoenas and Warrants:

1. Pathways will honor subpoenas and warrants that meet the requirements of 42CFR2.
2. When presented with a subpoena or warrant, staff will contact the agency attorney.
3. A copy of the 42CFR requirements for subpoenas and warrants shall be kept with each Recipient Rights Office.

Recipient Crimes on Pathways' Premises or Against Program Personnel:

1. Staff may report a crime or threatened crime by a recipient on Pathways' premises.
2. Staff may report threats to personnel made by a recipient.
3. Information that may be disclosed to law enforcement includes:

- a. Recipient's Name.
 - b. Recipient's Address.
 - c. Recipient's last know whereabouts.
 - d. Identifying the individual as a recipient of services.
4. Information regarding other recipients that may have been present is not permitted unless the other recipients have consented by signing an authorization form.

Child Abuse and Neglect Reporting:

1. Pathways staff shall report suspected child abuse or neglect.
2. There shall not be further release of co-occurring recipient information after the initial report and written confirmation to Protective Services or law enforcement unless there is a valid authorization signed by the recipient or guardian or a court order that complies with 42CFR2.

Adult Abuse and Neglect Reports:

1. Staff cannot identify a recipient for the purpose of reporting suspected abuse of a vulnerable adult to Adult Protective Services.
2. Staff should contact the Office of Recipient Rights if they suspect abuse or neglect of a vulnerable adult.

Qualified Service Organization/Business Associates Agreement:

1. Pathways may communicate without a valid authorization to a QSO that agrees:
 - a. That in receiving, storing, processing or otherwise dealing with any information from Pathways about recipients, it is fully bound by HIPAA, the Michigan Mental Health Code and 42CFR2.
 - b. To resist, in judicial proceedings if necessary, any efforts to obtain access to information pertaining to recipients except as permitted by 42CFR2.
 - c. To use appropriate safeguards to prevent the unauthorized use or disclosure of the protected information.
 - d. To report to Pathways any use or disclosure of the protected information not provided for in the agreement of which it comes aware.
 - e. To ensure that any agent, including a subcontractor, to whom the QSO/BA provides the protected information received from Pathways, or that it creates or receives on behalf of Pathways, agrees to the same restrictions and conditions that apply through the QSO/BA agreement.

- f. To provide access to the protected information at the request of Pathways, or to an individual as directed by Pathways, in order to meet the requirements of 45CFR 164.524.
 - g. To make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from Pathways, or created or received by the QSO/BA on behalf of Pathways, to Pathways or Health and Human Services for purposes of determining the program's compliance with HIPPA.
 - h. To document disclosures of protected information, and information related to such disclosures, as would be required for Pathways to respond to a request by an individual for an accounting of disclosures in accordance with 45 CRD 164.528.
 - i. To provide to either Pathways or the requesting individual information necessary to allow Pathways to respond to a request by an individual for an accounting of disclosures in accordance with 45CFR 164.528.
 - j. That the program may terminate the agreement if it determines that the QSO/BA violated any material term.
 - k. That upon termination of the agreement for any reason, the QSO/BA will not retain any copies of the protected information, and will return or destroy all protected information received from Pathways, or created or received by the QSO/BA on behalf of Pathways.
 - l. That in the event that the QSO/BA determines that returning or destroying the protected information is infeasible, it will notify Pathways of the conditions that make return or destruction infeasible and will extend the protections of the agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction infeasible, as long as it maintains the information.
2. Pathways cannot enter into a QSO/BA with law enforcement agencies.
 3. Pathways cannot enter into a QSO/BA with another agency that provides the same drug or alcohol abuse diagnosis, treatment, counseling or referral services that Pathways provides to its recipients.

Duty to Warn:

1. There is no "duty to warn" exception to release information without consent under 42CFR2.
2. If staff believe that they have a co-occurring recipient that has made a threat of violence against a third party that meets the requirements of MCL330.1946, they should contact the Office of Recipients Rights.

Michigan Protection and Advocacy Service:

1. There is no exception under 42CFR2 for release of information to Michigan Protection and Advocacy Service.
2. Michigan Protection and Advocacy Service must have a release of information to obtain co-occurring recipient information, regardless if MP&A is investigating an allegation of abuse under MCL330.1748(8).

REFERENCES:

Act 258 of the Public Acts of 1974, as amended (Michigan Mental Health Code) Sections 748, 748(a), 750 and 946.

45 CFR Part 164 section 512(j).

42 CFR Part 2 Subpart Subpart D.