

PATHWAYS CMH

POLICY TITLE: Confidentiality and Disclosure	CATEGORY: Recipient Rights	
EFFECTIVE DATE: July, 6, 2005	BOARD APPROVAL DATE: July, 6, 2005	
REVIEW DATE: May 22, 2020	REVISION(S) TO POLICY STATEMENT: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	OTHER REVISION(S): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
RESPONSIBLE PARTY: Recipient Rights Supervisor or Designee	CEO APPROVAL: Mary J. Swift, CEO	

APPLIES TO:

Pathways Personnel, Volunteers, Board, Providers

POLICY:

It is the policy of the Pathways' Board that all information in the record and obtained in the course of providing services is confidential. It is the policy of the Board to comply with all legal, ethical, and accreditation standards governing the use and disclosure of recipient protected health information (PHI). These standards include but are not exclusive to the Health Insurance Portability and Accountability Act (HIPAA) security and privacy regulations, the Center for Medicaid and Medicare Services (CMS) Confidentiality of Alcohol and Drug Abuse Records Final Rule, Michigan Administrative Rules and the Michigan Mental Health Code requirements that protect the privacy, security, confidentiality, and integrity of recipient information. Pathways' will:

Post, distribute and otherwise disseminate the Pathways' Notice of Privacy Practices and obtain acknowledgment of said distribution of the Notice of Privacy Practices;

Include a summary of Section 748 of the Mental Health Code in each recipient's file.

Obtain or receive a valid authorization for the use or disclosure of PHI when such valid authorization is required under State and Federal law. Acquisition of a valid authorization for release or disclosure of PHI will be consistent with such authorization;

Ensure recipients' right to inspect and copy their medical record for a cost-based fee;

Ensure recipients' right to request an amendment or correction of protected health information as recorded in the designated record set as long as Pathways maintains the information in the designated record set;

Ensure recipients' right to request and receive an accounting of disclosures of the Protected Health Information made by Pathways;

Comply with all legal and accreditation standards governing the release of PHI by subpoena either for a personal appearance or for records (duces tecum);

Comply with all federal and state laws, regulations, and accreditation standards when disclosing recipient protected health information (PHI) to Michigan Protection and Advocacy Services;

Provide a mechanism for reviewing whether or not the release of information will adversely affect the life or physical safety of the recipient or another person.

Ensure suspected abuse and neglect is reported by employees.

Consider all recipient requests for restriction of uses and disclosure of their PHI and make every attempt to grant reasonable requests. Recipients will also have the right to request reasonable accommodations to ensure that communications between both parties remain confidential and that the methods of communication are in the best interests of both parties;

Comply with legal and accreditation standards governing the confidentiality and disclosure of information pertaining to HIV infection or Acquired Immunodeficiency Syndrome (AIDS) of recipients.

Take appropriate action when a threat of physical violence is made by a recipient. Mental Health Professionals have the duty to warn victims or take reasonable precautions to provide protection from violent recipient behavior if the recipient has communicated an actual and foreseeable threat of physical violence by specific means against a clearly identified or reasonably identifiable victim.

Hold business associates to the same confidentiality standards.

Enforce and apply sanctions against employees, agents, and officers of Pathways who violate the standards and procedures set forth in this policy.

PURPOSE:

To protect the confidentiality of recipient information.

DEFINITIONS:

Care Coordination– A set of activities to ensure needed, appropriate and cost effective care for beneficiaries. As a component of overall care management care coordination activities focus on ensuring timely information, communication, and collaboration across a care team and between Responsible Plans. Major priorities for care coordination in the context of a care management plan include:

- Outreach and contacts/communication to support patient engagement,
- Conducting screening, record review and documentation as part of Evaluation and Assessment,
- Tracking and facilitating follow-up on lab tests and referrals,
- Care Planning
- Managing transitions of care activities to support continuity of care,
- Address social supports and making linkages to services addressing housing food etc., and
- Monitoring, Reporting and Documentation.

Responsible Plans- the Contractors with responsibility for Medicaid beneficiaries within the shared service area.

Treatment- the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

REFERENCES:

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

Department of Community Mental Health Administrative Rules section R 330.7051 Rule 7051.

45 CFR part 160 et al.

45 CFR part 164 et al.

42 CFR part 2 et al.

Administrative Rules For Substance Abuse Programs in Michigan.

HISTORY:

Dates Reviewed: June 2008, June 2011; July 2013; July 11, 2014; May 5, 2015; April 1, 2016; April 1, 2017; 9/25/18; 5/22/20

Dates Revised: June 2011; May 5, 2015; 5/22/20 (Procedure)

Dates Approved: July, 6, 2005

PROCEDURES:

All persons authorized access to confidential recipient PHI must read, understand and comply with this standard.

All persons must review the Confidentiality and Disclosure Procedure for Co-occurring recipients.

I. STANDARDS:

A. Notice of Privacy Practices:

Each recipient is entitled to Northcare Notice of Privacy Practices upon admission and periodically thereafter as described in Appendix 1, "*Notice of Privacy Practices*".

B. Internal Confidentiality:

- Internal access to recipient PHI shall be limited to those staff who have a need to know said information to perform their assigned duties. Access to information will follow the principle of minimum necessary to perform these assigned duties for treatment, payment, and healthcare operations. Access shall be limited to staff providing services to the recipient, peer review, professional consultation, investigation, supervision, clinical record functions, billing functions, data entry, data collection, and data dissemination. An employee who is a recipient, parent of a minor recipient, legal guardian, or who has power of attorney for a recipient, may not access records through employee access channels. See Pathways Privacy Practices, Appendix 2.
- Written records which comprise the designated record set will be kept in a secure room, locked file cabinet, safe or other similar container when not in use. The Records Department policies and procedures will provide direction on the regulation and control of access to and use of written records which are subject to these standards.

C. Disclosures – General:

A record is kept of disclosures including:

- a. Information released.
- b. To whom it is released.
- c. Purpose stated by person requesting the information.
- d. Statement indicating how disclosed information is germane to the stated purpose.
- e. The part of law under which disclosure is made.
- f. Statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released.

- The recipient or his/her legal representative has a right to copy and inspect their PHI as per the procedure in Appendix 2, "*Recipient Access and Schedule of Fees*".
- Pathways will provide the Secretary of Health and Human Services access to PHI in order to investigate or determine Pathways' compliance with Parts 160, 162, and 164 of HIPAA.
- These policies and procedures shall be compliant with state and federal laws and regulations that have not been preempted by HIPAA and its implementing regulations, including privacy regulations, containing provisions relating to the release of information from a recipient's designated record set.
- Requests for recipient information shall be directed to the clinical record staff for processing and documentation.
- Other than disclosures which are mandatory or authorized under the Michigan Mental Health Code, the HIPAA privacy standards, and other federal and state laws and regulations, Pathways must obtain an authorization or give a recipient an opportunity to object to a use or disclosure in order to use or disclose recipient PHI.
- Pathways must make all reasonable efforts not to use or disclose more than the minimum of PHI necessary to accomplish the intended purpose of the use or disclosure. Procedures for accomplishing minimum necessary are outlined in Appendix 3, "*Minimum Necessary Release of Information*".
- Pathways will charge a reasonable fee to offset the costs associated with specific categories of requests as outlined in Appendix 2, "*Recipient Access and Schedule of Fees*".
- Pathways requires a written, signed, current, valid authorization to release protected health information as follows:

CATEGORY	REQUIRED SIGNATURE
Adult Recipient	The recipient or a duly authorized representative, such as court-appointed guardian. Proof of authorized representation required, such as notarized power of attorney or court order.
Deceased Recipient	Court appointed personal representative or executor.
Unemancipated Minor	Parent, legally appointed guardian, or guardian ad litem. (Proof of relationship required).
Emancipated Minor	Same as adult recipient above.
Psychiatric, drug, alcohol program recipients	Same as adult recipients above. Pathways requires a signed authorization for TPO.
AIDS/HIV or other sexually transmitted disease recipients	Same as adult recipients above. See Appendix 14 for special requirements.
Unemancipated Minor	If 14 years or older, same as adult above for first 12 sessions. Any disclosures thereafter will require signature of parent or guardian.
Co-occurring	See Co-occurring procedure

- Disclosure can be made by staff, volunteers, and agents in compliance with all applicable policies and procedures governing such disclosures. Those who disclose PHI must ensure that releases requiring documentation of said disclosure in the accounting log are completed.
- A recipient, guardian, or parent of a minor recipient, after having gained access to treatment records in accordance with this procedure, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's designated record set by requesting Pathways to change the record or shall be allowed to insert a statement into the designated record set correcting or amending the information at issue without changing the original documentation. If the recipient requests an actual change to the record and that change is denied by Pathways, the recipient may appeal. All requests for changes, amendment insertions and appeals will be processed in accordance with Appendix 5, "*Recipient's Right to Request Corrections or Amendments to the PHI*".
- A recipient, guardian, or parent of a minor recipient may request an accounting of disclosures of PHI which were not for treatment, payment or health care operations. Requests for such accountings will be processed in accordance with Appendix 6, "*Accounting of Disclosures*".
- A recipient, guardian, parent of a minor may request a restriction of PHI. This request will be processed by the Pathways' Privacy Officer in accordance with Appendix 12, "*Recipient Request for a Review of Uses and Disclosures of PHI*".
- In the event of any improper use or disclosure of PHI, when such improper use becomes known to the agency, Pathways will attempt to mitigate any harmful effects to the extent practicable.

- Pathways' can use or disclose de-identified information provided it complies with the procedure outlined in Appendix 15, "*De-Identified Information*."
- Pathways' will implement administrative, technical, and physical safeguards (i.e. HIPAA Security Rule) to protect the confidentiality and integrity of PHI by the due date of the HIPAA Security standards.

D. Disclosures:

Mandatory uses and disclosures for which an authorization, or opportunity to object are not required.

When requested, Pathways staff may use or disclose PHI to the extent that such use and disclosure is required by law and the use and disclosure complies with and is limited to the relevant requirements of such law. PHI shall be used or disclosed only under or more of the following circumstances:

1. MCL 330.1748 (7) has been amended to allow information to be disclosed by the holder of the record as necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the health insurance portability and accountability act of 1996, Public Law 104-191.

Pathways CMH acknowledges the technical aspect of the change in the law; however, in order to offer continued, substantive protection to recipients and minimize risk of unnecessary or unlawful disclosures, Pathways maintains best practice is to obtain a release of information prior to disclosures for treatment, coordination of care, or payment purposes. Pathways employees shall therefore not disclose protected health information without the informed consent of the recipient or the individual with authority to provide consent for purposes of treatment, coordination of care, or payment purposes. The only exception to this shall be based on a determination by a clinical supervisor or the Medical Director that disclosure of a recipient's protected health information for treatment or coordination of care purposes is necessary in order to mitigate a substantive risk to the individual's health or safety. Under such circumstances, only the minimum amount of PHI necessary to accomplish the intended purpose of the disclosure shall be disclosed. This exception does not pertain to recipients receiving co-occurring services. 42 CFR Part 2 requires consent be obtained prior to any disclosures for treatment, coordination of care, or payment purposes.

2. For disclosure of PHI for treatment and payment purposes, as defined by HIPAA: see #1 above. For disclosure of PHI for health care operations, as defined by HIPAA (45 CFR 164.501): obtain consent from the recipient or his/her legal representative.
3. Pursuant to valid orders or subpoenas of a court of record, subpoenas of the legislature, unless the information is made privileged by law as outlined in Appendix 7, "*Subpoena Policy*". For co-occurring recipients see co-occurring procedure.

4. To a prosecuting attorney as necessary for the prosecuting attorney to participate in a proceeding governed by the Michigan Mental Health Code if it is either:
 - a. Non-privileged information disclosed or;
 - b. Privileged information disclosed pursuant to MHC section 750 (2) including:
 - ◆ Names of witnesses to acts which support the criteria for involuntary admission.
 - ◆ Information relevant to alternatives to admissions to a hospital.
 - ◆ Other information designated in Pathways policies.
 - ◆ For co-occurring recipients see co-occurring procedure.

5. To an attorney for the recipient, with the authorization of the recipient, the recipient's guardian with authority to consent, or the parent with physical and legal custody of a minor recipient. Information made confidential by this policy shall be provided to attorneys, other than prosecuting attorneys, as follows:
 - a. An attorney who is retained or appointed by a court to represent a recipient and who presents identification and a consent or release executed by the recipient, by a legally empowered guardian, or by the parents of a minor shall be permitted to review, on the provider's premises, a record containing information concerning the recipient. 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 records.
 - b. Absent 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 an order from a court directing disclosure of information concerning the recipient to the attorney.
 - c. 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 consent or release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records.

6. If necessary to comply with another provision of law. In the case that a request for disclosure is received based on a federal or state law other than used in this policy and procedure, refer that request to Pathways' Privacy Officer.

7. To the Department of Health and Human Services or other health oversight agency, if the information is necessary in order for said entity to discharge a duty placed upon it by law. Oversight does not include investigation or activity in which the recipient is the subject of the investigation or activity that does not arise out of and is not directly related to the receipt of

health care, claim for public benefits related to health, or qualification for/receipt of public benefit or services when the recipient's health is integral to qualification or receipt.

8. To the office of the auditor general, if the information is needed for that office to discharge its constitutional responsibility.
9. To the person having the authority to act on behalf of the deceased's estate to the extent the disclosures are necessary for that personal representation. Relatives who are not personal representatives and otherwise entitled to benefits must obtain information from another source.
10. To an adult recipient if all of the following apply:
 - a. A request has been received from the recipient.
 - b. The recipient does not have guardian and has not been adjudicated legally incompetent.
 - c. The case entry has been made after March 28, 1996.
11. As necessary for the purposes of outside, 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 would likely be harmed by the identification.
12. 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 as outlined in Appendix 8, "*Duty to Report*." For Co-occurring recipients see co-occurring procedure.
13. 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 and Pathways Policies and Procedures as described in Appendix 11, "*Abuse and Neglect Reporting Procedures*." For Co-occurring recipients see co-occurring procedure.
14. To 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.
15. To an identified representative of Michigan Protection and Advocacy Services 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 as described in Appendix 9, "*Disclosure to Protection and Advocacy Policy*." For Co-occurring recipients see co-occurring procedure.

16. To medical personnel in a medical emergency (substance abuse clients only). For Co-occurring recipients see co-occurring procedure.
17. To private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings as follows:
 - a. 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, on the provider's premises, a record containing information concerning the recipient. Physicians or psychologists shall be notified before the review of records when the records contain privileged communication that cannot be disclosed in court under MCL 330.1750(1).
 - b. 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 of privilege or because of other conditions that, by law, permit or require disclosure.
18. The holder of the record may 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 service. For Co-occurring recipients see co-occurring procedure.
19. The holder of the record shall not deny or delay disclosing information which is a mandatory disclosure listed above per:
 - a. A request from the recipient's attorney even if the legally empowered guardian or the parent of a minor recipient requests a delay, or;
 - b. A case record 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.

E. Uses and Disclosures Requiring an Opportunity for the Individual to Agree or to Object:

If the recipient is present for, or otherwise available prior to a use or disclosure to a family member, other relative, or a close personal friend of the recipient, or any other person identified by the recipient, Pathways may use or disclose the PHI if it is documented in the clinical record and:

- a. The recipient agrees and the agreement is documented in a progress note.
- b. The clinician provides the recipient with the opportunity to object to the disclosure, and the recipient does not express an objection.

- c. The clinician reasonably infers from the circumstances, based upon the exercise or professional judgment, that the recipient does not object to the disclosure.

This procedure does not apply to co-occurring recipients.

F. Disclosures - Where Authorization is Required:

Except as otherwise provided in this policy, Pathways staff may not disclose PHI without authorization which is valid under this policy. Valid authorization can be obtained with an informed consent from the recipient, the recipient's guardian with authority to provide informed consent, the parent with legal custody of a minor recipient, or the court appointed legal representative or executor of the estate of a deceased recipient (See Appendix 4, "*Authorization Form and Authorization For Requirements*"). Confidential PHI can be disclosed with a valid authorization to all of the following:

- a. Providers of health services, other than Pathways, when these providers receive the authorized portions of the clinical and medical record.
- b. The recipient, his or her guardian. the parent with legal custody of a minor child, any other individual or agency unless in the written judgment of the holder of the record the disclosure would be detrimental to the recipient or others unless the recipient is an adult and does not have a guardian.

To enhance treatment, recipients may be requested to authorize disclosure of information to family members, or significant others, or other agencies providing services to the recipient. Such authorization is voluntary.

To encourage opportunities for positive community relations, recipients in residential or day treatment programs may be requested to authorize disclosure of generic information. Such consent is voluntary and all such disclosures shall respect the privacy and dignity of the recipient.

When information is disclosed for clinical purposes and with appropriate authorization, the holder of the record shall release a copy of the entire medical and clinical record to the provider of mental health services with the exception of information pertaining to HIV infection or AIDS. Release of the entire medical and clinical record must be done in a circumstance where it is clinically appropriate to do so.

G. Disclosures - Detrimental Information:

For case records 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 is legally competent. The information shall be disclosed as expeditiously as possible but in no event later than 30 days after receipt of a 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.

Unless the above applies to a request for PHI, the holder of the record may make a determination that disclosure of PHI may be detrimental to the recipient or others and decline to disclose the PHI or determine whether part of the PHI may be released without detriment.

To review PHI for a determination of detriment, Pathways staff will follow the procedure set forth in Appendix 10, "*Review for Detriment*." An individual who does not receive the requested PHI because of a determination of detriment or for any other reason may file a recipient rights complaint and/or a complaint with the Pathways Privacy officer. See Co-occurring procedure.

II. ENFORCEMENT:

All supervisors are responsible for enforcing this policy. Refer to "HIPAA Sanction Policy and Procedure." Employees who violate this policy are subject to discipline up to and including termination from employment in accordance with Pathways personnel policy and procedures.

III. LIST OF APPENDICES:

1. Notice of Privacy Practices and Notice of Privacy Practices Policy and Procedures.
2. Recipient Access and Schedule of Fees for Copying.
3. Minimum Necessary Release of Information Policy and Procedure.
4. Authorization Form and Authorization Form Requirements Policy and Procedure.
5. Recipient's Right to Request Corrections or Amendments to PHI.
6. Accounting of Disclosures Policy and Procedure.
7. Pathways Subpoena Policy and Procedure.
8. Pathways Disclosure of PHI for Duty to Warn Policy and Procedure.
9. Pathways Disclosure to Michigan Protection and Advocacy Policy and Procedure.
10. Pathways Review for Detriment Policy and Procedure.
11. Pathways Abuse and Neglect Reporting Policy and Procedure.
12. Pathways Request for Restriction of PHI Policy and Procedure and Request Form.
13. Pathways Verification of Identity Policy and Procedure.
14. AIDS/HIV Release Requirements.
15. De-identifying Information Policy and Procedure.
16. Co-occurring Procedure.

17. HIPPA Sanction Policy and Procedure

18. Breach Notification.