

SWMBH Operating Policy 11.20

Subject: Disclosure of Confidential Information, Disposal of Records, Discontinuation of an SUD program - SARF		Accountability: SAPT & UM	Effective Date: 7/28/14	Pages: 4	
REQUIRED BY: BBA Section _____ PIHP Contract Section _____ NCQA/URAC Standard _____ SA SARF Department of Community Health Mental Health and Substance Abuse Administration Substance Use Disorder Services Program R 325.14116, Confidentiality of Client Case Records, Rule 116 Other HIPAA 42 CFR Part 2, PA 368			Last Reviewed Date: 11/3/16	Past Reviewed Dates: 7/28/14	
LINE OF BUSINESS: <input type="checkbox"/> Specialty Waiver (B/C) <input type="checkbox"/> I Waiver <input checked="" type="checkbox"/> Healthy Michigan <input checked="" type="checkbox"/> SUD Medicaid <input checked="" type="checkbox"/> SUD CA Block Grant <input type="checkbox"/> OTHER: _____		APPLICATION: <input checked="" type="checkbox"/> SWMBH Staff and Ops <input checked="" type="checkbox"/> Participant CMHSPs <input checked="" type="checkbox"/> SUD Providers <input type="checkbox"/> MH / DD providers <input type="checkbox"/> DD providers <input type="checkbox"/> Other: _____		Last Revised Date: 11/3/16	Past Revised Dates:
Approved: <u>Yvonne Smith</u> Date: <u>11/11/16</u> <u>Michelle Todd</u>			Required Reviewer: Director of SAPT Chief Compliance Officer		

I. Purpose

Southwest Michigan Behavioral Health (SWMBH) will release confidential information and/or records that contain the identity, diagnosis, prognosis, or treatment of any individual which are maintained in connection with substance abuse treatment, prevention, or education only as authorized by the individual or as allowed by Federal Law.

II. Policy

It shall be the policy of Southwest Michigan Behavioral Health to manage Disclosure of Confidential Information, Storage and Record Retention and Disposal of Records which meet the contractual and regulatory requirements of the Michigan Department of Health and Human Services (MDHHS) contract and Center for Medicare and Medicaid Services (CMS) Code of Federal Regulations (CFR)

III. Standards and Guidelines

A. Obtaining an Authorization to Disclose

1. Information disclosed must be authorized by the individual receiving treatment (including a minor, reference: 013.010) and only to the extent necessary to carry out the purpose of the disclosure. Information to third party payers for payment is also subject to having a signed authorization to disclose.

2. A minor must sign his/her authorization to disclose form before any information can be released. Parental consent is optional based on the wishes of the minor.
 3. An authorization to disclose information form will be used for this purpose that meets the requirements of 42 CFR Part 2 and HIPAA privacy laws including:
 - a. Name or general designation of the program or person permitted to make the disclosure
 - b. Name or title of the individual or organization to which disclosure is to be made
 - c. The name of the client
 - d. Purpose of disclosure
 - e. How much and what kind of information is to be disclosed
 - f. Signature of client (including the minor). If found to be incompetent or deceased, the signature must be that of a state appointed personal representative. Barring no personal representative, the client's spouse may provide consent, or barring no spouse a member of the client's family may authorize consent.
 - g. Date on which the consent is signed
 - h. A statement that the consent is subject to revocation at any time except to the extent that the disclosure has already been made with a valid consent
 - i. The date, event or condition upon which the consent will expire if not revoked before.
 - j. A statement indicating that signing a disclosure consent is not a condition of receiving services.
 4. Clients will be given a copy of the disclosure form that they have signed
- B. Disclosing Information
1. A disclosure may not be made if the consent:
 - a. Has expired
 - b. Fails to conform to any of the requirements of 42 CFR Part 2 and/or HIPAA privacy laws
 - c. Is known to have been revoked
 - d. Is known by the holder of the record to be materially false
 2. Each disclosure made with a valid consent must be accompanied by a statement indicating that the receiver is prohibited from making further disclosure of this information unless they receive a valid consent allowing further disclosure.
 3. Disclosing to criminal justice agencies that have made a referral:
 - a. a consent must have been obtained
 - b. disclosure is made only to those criminal justice personnel who need the information
 4. When information is disclosed a notice will accompany each disclosure. See attached notice. This notice can be provided by stamp or by a separate enclosed/attached form.
- C. Exceptions to a Written Authorization to Disclose
1. Medical Emergencies – identifying information may be released to medical personnel or the Food and Drug Administration for the purpose of treating an immediate threat to the health of the individual which requires medical intervention. In the case of the FDA, the purpose must be in accordance with a threat to the health of the individual as a result of an error in manufacturing, labeling or sale of a product. Any disclosures under this exception will be documented on the HIPAA disclosure form.
 2. Known or Suspected Child Abuse/Neglect – identifying information must be released to the Department of Human Services in that county in all matters related to known or suspected child abuse/neglect in accordance with Policy Numbers: 08.082.001 and 08.082.006. Any disclosures under this exception will be documented on the HIPAA disclosure form.

3. Crimes on the premises of SWMBH or against SWMBH employees – identifying information may be disclosed that is directly related to a crime or threat to commit a crime on the premises or against personnel. The disclosure must be limited to the circumstances of the incident, the status of the individual, the name and address of the individual, and the individual's last known whereabouts. Any disclosures under this exception will be documented on the HIPAA disclosure form.
 4. Communication between the programs and personnel of SWMBH– disclosures for the purpose of coordinating care will be limited to persons that have a need to know information to carry out their duties of treatment.
 5. Research Activities – identifying information can be disclosed for research activities if the Chief Executive Officer determines that the researcher is qualified to conduct the research and if the researcher has a protocol to ensure that information disclosed will be secure and not re-disclosed.
 6. Audit and Evaluation – identifying information can be disclosed if the Chief Executive Officer determines that the auditors are qualified to conduct the audit/evaluation activities, records are not copied or removed, the audit is performed in accordance to federal, state or local requirements, is providing oversight of financial assistance, or is performing utilization or quality control review.
- D. Court Orders and Subpoena
1. A court order can be issued to authorize a disclosure of information not already covered by 42 CFR Part 2. Before a disclosure can be made, the court order must be accompanied by a subpoena. Neither a court order alone, or a subpoena alone compels disclosure. Should such a scenario arise, the receiver of the court order or subpoena will alert the supervisor and Chief Executive Officer for technical assistance.
- E. Revoking Consent to Disclose Information
1. Individuals wanting to revoke authorization to disclose information may do so at any time. The revocation date will be recorded on the previously valid consent form so that no information will be released from that date forward.
- F. Notice to Clients of Federal Confidentiality Requirements
1. At the time of admission, each client will be given a copy of the Southwest Michigan Behavioral Health Services Consumer Handbook. Within this handbook, a notice meeting the requirements of 42 CFR Part 2 is available and explained during the consumer orientation process. Receipt of this handbook is obtained and filed in the client chart.
- G. Discontinuation of SA Program and Disposal of Records
1. In the event of discontinuation of SA program, client case records will be disposed of according to policy.
 2. The licensed SA program will notify the office and CA (SWMBH) in the event of closure of the SA program. The notification will be no less than 30 days prior to closure.
 3. In the event of a discontinuation of the SA program, all current clients will be notified of the date of the closing. Clients will be provided alternative treatment programs. All client records will be transferred to the new program and if records are requested after the program has closed, clients will be made aware of procedure to obtain records. Release of information will be completed.

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IV. Definitions

None

V. References

42 CFR Part 2 (Substance Abuse Confidentiality Laws)

Act 238 of the Public Acts of 1975 as amended (Child Protection Law)

45 CFR (HIPAA Privacy Rule)

PA 368

VI. Attachments

SWMBH 11.20A Notice of Confidentiality and Privacy Practices



Consumer Notice of Confidentiality and Privacy Practices Substance Abuse Services

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

Effective date of this Notice: January 1, 2014

Southwest Michigan Behavioral Health (SWMBH) is a provider of substance abuse access, assessment and referral services. As such SWMBH may seek information about you in order to assess your needs, determine your program eligibility, and to refer you to substance abuse treatment or other support services. In providing these services, SWMBH may share health information about you in the course of coordinating your treatment, obtaining payment, and conducting operations. Because of this, SWMBH and its employees, agents and affiliates must comply with SWMBH's policies related to the confidentiality of health information.

SWMBH is committed to protecting the confidentiality, privacy and security of your health information. This commitment to confidentiality applies in all settings where SWMBH creates, receives, uses, processes, maintains or furnishes health information, including but not limited to treatment, payment, and health care operations in administrative settings.

No SWMBH employee or agent shall access, discuss, review, disclose, transmit, alter or destroy your health information, except as required to fulfill their job. The scope of any disclosure, access, use or transmittal of your health information must be limited to information that is necessary for the performance of the job responsibility.

SWMBH protects the confidentiality of your health information as required by the Federal Confidentiality of Alcohol and Drug Abuse Patient Records regulations as stated in 42 CFR Part 2, the Privacy Rule provisions within the Health Insurance Portability and Accountability Act (HIPAA) as stated in 45 CFR Parts 160 and 164, the Health Information Technology for Economic and Clinical Health as stated in the Omnibus Final Rule, and the Michigan Mental Health Code.

I. Permitted Uses and Disclosures of Protected Health Information by SWMBH

Without consumer consent, the confidentiality of alcohol and drug abuse patient records maintained by SWMBH is protected by federal law and regulations. Generally, SWMBH may not say to a person outside of SWMBH, that a patient attends a substance abuse treatment program, or disclose any information identifying a patient as an alcohol or drug abuser unless:

1. The patient consents in writing.



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2. In connection with treatment, payment for services received, or health care operations;

a. Treatment: SWMBH can share consumer information as necessary to provide treatment. We may use and/or disclose protected health information to health care providers and staff in order to provide treatment. However, as a substance abuse program, we are limited in sharing confidential information and may not share confidential information without your consent, except as permitted by federal law and regulations as stated in 42 CFR §2.51, 2.52, and 2.53;

i. Treatment includes:

1. Sharing Protected Health Information with other providers (including hospitals and clinics) if you have requested health care from those providers;
2. Referring you to health care providers for treatment (including linking with available providers in areas where the patient may have relocated); and
3. Coordinating care with others.

b. Payment: SWMBH may use consumer protected health information to seek payment from Medicaid or to pay providers for services covered by SWMBH. For example, Medicaid may request and receive from SWMBH a consumer's name, address, date of birth, social security number, dates of service, the services provided, and the condition being treated. We may also use and disclose consumer health information in order to pay a health care provider for services provided to our consumers and covered by our plan.

c. Health Care Operations: Protected health information may be used as necessary to support our day to day activities or operations. For example, information on the services a consumer received may be used to support budgeting, financial reporting, and activities to evaluate service quality and delivery. Daily operations include but are not limited to: financial audits and evaluations, state and federal quality review audits, and third party medical record audits conducted for quality review purposes.

3. The disclosure is made to qualified service organizations or business associates who provide services related to the program's treatment, payment or health care operations;

4. The disclosure is made to report suspected child abuse or neglect;



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5. The disclosure is made to report a crime or a threat to commit a crime on program premises or against program personnel;
6. The disclosure is allowed by court order or required in order to comply with federal or state law; or
7. The disclosure is made to medical personnel for a medical emergency or to qualified personnel for research, audit, or program evaluation.

All other disclosures of Protected Health Information not specified above require the consumer's written consent or authorization. A consumer's written consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already taken action in reliance on it. We will never share consumer health information without written permission for marketing purposes or to sell the information.

II. Our Responsibilities

We are required by law to maintain the privacy and security of your protected health information. We will let you know promptly if a breach occurs that may have compromised the privacy or security of your information. We must follow the duties and privacy practices described in this notice and give you a copy of it. We will not use or share your information other than as described here unless you tell us we can in writing. If you tell us we can, you may change your mind at any time. Let us know in writing if you change your mind. We have the right to change our Notice of Confidentiality and Privacy Practices at any time. The revised Notice will apply to all protected health information we maintain. We will provide copies of the revised Notice to your provider so it will be available upon your request and on our website at www.swmbh.org.

III. Your Rights With Regard to The Use or Disclosure of Your Protected Health Information

When it comes to your health information, you have certain rights. This section explains your rights and some of our responsibilities to help you:

- a) Requests to Restrict Use or Disclosure of Protected Health Information. You may request in writing that we restrict uses or disclosures of your protected health information to carry out treatment, payment, or health care operations and disclosure to family and friends by SWMBH under circumstances that are permitted under the Federal Regulations (45 CFR § 164.510(b)). We are not required to agree to your request, and we may say "no" if it would affect your care. If we agree in writing to restrict the use of your health information, then we may not use the restricted health information in violation of the



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agreed upon restriction, except in the case where you need emergency medical treatment and the protected health information is needed to provide the emergency treatment.

b) Requests for Alternative Methods of Communication to Preserve Confidentiality. You may request in writing that we provide confidential communications of your health information to you by alternative means or to alternative locations. For example, if you do not want your family members to know about your treatment, then you may request that we communicate with you about your treatment at your place of employment, by mail to a designated address, or by phone to a designated phone number. Similarly, you may request that we send communications in a closed envelope rather than a postcard, as an "alternative means". We are required to accommodate all reasonable requests or if you tell us you would be in danger if we do not.

c) Right to Request Amendment or Correction of Protected Health Information. You have the right to ask us to correct your health care information and claims records if you think they are incorrect or incomplete. You have the right to ask for the appropriate procedures to follow in order to request an amendment or correction of your health care information and claims records. We may say "no" to your request, but we will tell you why in writing within 60 days of your request.

d) An Accounting of Disclosures of Protected Health Information. We are required to keep an accounting of certain disclosures we make of your protected health information. You can ask for a list of the times we've shared your health information, except for the circumstances noted below, for six years prior to the date you ask, who we shared it with, and why. We will provide one accounting a year for free but will charge a reasonable, cost-based fee if you ask for another one within 12 months. We are not required to account for the following disclosures of protected health information:

- i. To carry out treatment, payment, or health care operations as provided in § 164.502;
- ii To you regarding your protected health information that you have requested or asked us to disclose § 164.502;
- iii. To persons involved in your care or other notification purposes as provided in § 164.510;
- iv. For national security or intelligence purposes as provided in §164.512(k)(2);

e) Obtain A Copy of Your Health Information and Claims Records. You can ask to see or get a copy of your health information and claims records and other information we have on record about you. You may ask for the appropriate procedures to follow in order to obtain your health and claims information.



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We will provide a copy or a summary of your health and claims records, usually within 30 days of your request. We may charge a reasonable, cost-based fee for providing you the information.

f) Receive A Copy of This Notice of Confidentiality and Privacy Practices. You can ask for a paper copy of this notice at any time, even if you have agreed to receive the notice electronically. You will be provided a paper copy of the notice promptly upon your request.

g) Choose Someone to Act For You. If you have designated a durable power of attorney for health care or if someone is your legal guardian, that person can exercise your rights and make choices about your health information. We will make sure the person has this authority and can act for you before we take any action.

h) File A Complaint if You Feel Your Rights Are Violated. You have the right to complain if you feel your rights have been violated by contacting the SWMBH Privacy Officer at 1-800-783-0914. You can also file a complaint with the U.S. Department of Health and Human Services office for Civil Rights by sending a letter to: 200 Independence Avenue, S.W., Washington, D.C. 20201, calling 1-877-696-6775, or visiting www.hhs.gov/ocr/privacy/hipaa/complaints/. No one may retaliate against you if you file a complaint.



**Prohibition on Re-disclosure
Substance Abuse Services**

In compliance with 42 CFR §2.32, you are notified as follows:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

