

## War Memorial Hospital

**TYPE:** DEPARTMENTAL – BEHAVIORAL HEALTH

**POLICY:** CONFIDENTIALITY - BEHAVIORAL HEALTH PATIENTS

**REPLACES:** 10/07, 1/08, 2/14, 12/16

**PURPOSE:** To define the policy of War Memorial Hospital regarding confidentiality for patients receiving mental health services at the Behavioral Health Center in accordance with the Michigan Mental Health Code (MHC) Public Act 258, or Section 330.1748.

### **PROCEDURE:**

- A. Information in the patient's record and other information obtained during the course of providing services shall be kept confidential and shall not be open to public inspection. [MHC 330.1748(1)]
- B. A summary of sections 748 and 750 of the Mental Health Code shall be included in the front of each patient's record which shall be part of the medical record. [AR 330.7051(1)]
- C. All service providers, volunteers, students, and any other pertinent personnel shall be informed of the patient's right to confidentiality and be directed to adhere to this.
- D. Information may be disclosed outside the department or hospital only in the following circumstances and under the following conditions: [MHC 330.1748(5)(a-g)]
  - a. Court order or subpoena of a court of record or legislature for non-privileged information.
  - b. To a prosecuting attorney as necessary for the prosecuting attorney to participate in a proceeding governed by the MHC.
  - c. To the patient's attorney with the consent of the patient or legal guardian.
  - d. When necessary to comply with another provision of law.
  - e. To the Auditor General if the information is necessary for that office to discharge its constitutional responsibilities.
  - f. To the Department of Health and Human Services when necessary in order for the department to discharge a responsibility placed upon it by law.
  - g. To a surviving spouse, or if none, closest relative of the patient in order to apply for and receive benefits but only if the spouse or closest relative has been designated the personal representative or has a court order. [45CFR 164.502(g)(4)]
- E. A record of disclosure shall be maintained and kept on file to include the following: [AR 330.7051(2)(a-e)]
  - a. Information released.
  - b. To whom it is released.
  - c. Purpose stated by person requesting the information.
  - d. Statement stating how disclosed information is relevant to the stated purpose.
  - e. The part of the law under which disclosure is made.
  - f. Statement that the person receiving the disclosed information could only disclose consistent with the authorized purpose for which it was released.
- F. Within fourteen (14) days of written request from (DHHS/CPS) pertinent records shall be released. (MHC 330.1748a)

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- G. Confidential information may be provided to a provider of mental health services, to the patient, to any individual or agency if consent has been obtained from the patient, the patient's legal guardian with authority to consent, a court approved personal representative, or an executor of the estate of a deceased patient. [MHC 330.1748(6)] WMH's BHC only provides services to adults over the age of 18.
- H. For case records made subsequent to March 28, 1996, information made confidential by section 748 of the Mental Health Code shall be disclosed to a competent adult patient upon the patient's request. Release shall be done as expediently as possible but in no event later than the earlier of thirty (30) days of the request or prior to release from treatment. [MHC 330.1748(4)]
- I. If a request for information has been delayed, the Program Director of the Behavioral Health Center shall review the request and make a determination within three (3) business days if record is on-site or ten (10) business days if record is off-site whether the disclosure would be detrimental. [AR 330.7051(3)]
- J. Except for MHC 748 (4), if a holder of the record, for a documented reason, declines to disclose, there shall be a determination whether part of the information can be released without detriment. [AR 330.7051(3)]
- K. If the recipient is not satisfied with the director's decision, the recipient may appeal to the Recipient Rights Office of the Behavioral Health Center. [AR 330.7051(3)]
- L. Information shall be provided to private physicians or psychologists appointed by the court or retained to testify in civil, criminal, or administrative proceedings as follows: [AR 330.7051(5)(a-b)]
  - a. They shall be notified before their review when the records contain privileged communication which cannot be disclosed in court, unless disclosure is permitted because of an express waiver of privilege or by law which permits or requires disclosure.
- M. A prosecutor may be given non-privileged information or privileged information which may be disclosed if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission, information relevant to alternatives to admission to a hospital or facility, and other information designated in policies of the governing body. [AR 330.7051(6)(a-c)]
- N. The hospital may disclose information that enables a patient to apply for, or receive, benefits without the consent of the patient or legally authorized representative only if the benefits shall accrue to the state or shall be subject to collection for liability for mental health services. [MHC 330.1748(7)(a) AR 330.7051(7)]
- O. If required by federal law, the hospital shall grant a representative of Michigan Protection and Advocacy Services access to the records upon written request for all of the following: [MHC 330.1748(8)]
  - a. A patient or other empowered representative has consented to the access.
  - b. A patient including a patient who has died or whose whereabouts are unknown, if all of the following apply:
    - i. Because of mental or physician condition, the patient is unable to consent to the access.
    - ii. The patient does not have a guardian or other legal representative, or the patient's guardian is the state.

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- iii. Michigan Protection and Advocacy Services has received a complaint on behalf of the patient or has probable cause to believe based on monitoring or other evidence that the patient has been subject to abuse or neglect.
- c. A patient who has a guardian or other legal representative if all of the following apply:
  - i. A complaint has been received by the Protection and Advocacy System or there is probable cause to believe the health or safety of the patient is in serious and immediate jeopardy.
  - ii. Upon receipt of the name and address of the patient's legal representative, Michigan Protection and Advocacy Services has contacted the representative and offered assistance in resolving the situation.
  - iii. The representative has failed or refused to act on behalf of the patient.
- P. The records, data, and knowledge collected for, or by, individuals or committees assigned a peer review function including the review function under section 143a (1) of the Mental Health Code are confidential, shall be used only for the purpose of peer review, are not public records, and are not subject to court subpoena. [MHC 330.1748(9)]
- Q. The hospital when authorized to release information for clinical purposes by the individual, the individual's guardian, or a parent of a minor, shall release a copy of the entire medical and clinical record to the provider of mental health services. [MHC 330.1748(10)]
- R. A recipient, guardian, or parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record; the recipient or other empowered representative was allowed to insert into the record a statement correcting or amending the information at issue; the statement became part of the record. The recipient may do so by contacting Medical Records and providing in writing the statement of correction or amending information they wish to address. (MHC 330.1749)

### **PSYCHIATRIC CONFIDENTIALITY FORM**

#### **PUBLIC ACT 258 - SECTION 748 MENTAL HEALTH CODE**

**SECTION 748.** (1) Information in the record of a recipient and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record. Only in the circumstances and under the conditions set forth in this section.

- A. If information made confidential by this section is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, when practicable, information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.
- B. An individual receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

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- C. For case record entries made subsequent to the effective date of the amendatory act that added section 100a, information made confidential by this section shall be disclosed an adult recipient, upon the recipient's request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. The holder of the record shall comply with the adult recipient's request for disclosure as expeditiously as possible but in no event later than the earlier of 30 days after receipt of the request or, if the recipient is receiving treatment from the holder of the record, before the recipient is released from treatment.
- D. Except as otherwise provided in subsection 4, 6, 7, or 9, when requested, information made confidential by this section shall be disclosed only under one (1) or more of the following circumstances:
  - a. Pursuant to orders or subpoenas of a court of record, or subpoenas of the legislature, unless the information is made privileged by law.
  - b. To a prosecuting attorney as necessary for the prosecuting attorney to participate in a proceeding governed by this act.
  - c. To an attorney for the recipient, with the consent of the recipient, the recipient's guardian with authority to consent, or the parent with legal and physical custody of a minor recipient.
  - d. If necessary in order to comply with another provision of law.
  - e. To the department if the information is necessary in order for the department to discharge a responsibility placed upon it by law.
  - f. To the office of the auditor general if the information is necessary in order for the department to discharge a responsibility placed upon it by law.
  - g. To a surviving spouse of the recipient or, if there is no surviving spouse, to the individual or individuals most closely related to the deceased recipient within the third degree of consanguinity as defined in civil law, for the purpose of applying for, and receiving, benefits.
- E. Except as otherwise provided in subsection 4, if consent is obtained from the recipient, the recipient's guardian with authority to consent, the parent with legal custody of a minor recipient, or the court-appointed personal representative, or executor of the estate of a deceased recipient, information made confidential by this section may be disclosed to all of the following:
  - a. Providers of mental health services to the recipient.
  - b. The recipient or his or her guardian or the parent of a minor recipient or any other individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others.
- F. Information may be disclosed in the discretion of the holder of the record:
  - a. As necessary in order for the recipient to apply for or receive benefits.
  - b. As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the individual who is the subject of the information can be identified from the disclosed information only if such identification is essential in order to achieve the purpose for which the information is sought or if preventing such identification would clearly be impractical, but in no event if the subject of the information is likely to be harmed by the identification.

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- c. 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.
- G. If required by federal law, the Department of Health and Human Services or licensed facility shall grant a representative of the Protection and Advocacy System designated by the governor in compliance with section 931, access to the records of all of the following:
  - a. A recipient, if the recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal and physical custody of the recipient has consented to the access.
  - b. A recipient, including a recipient who has died or whose whereabouts are unknown, if all of the following apply:
    - i. Because of mental or physical condition, the recipient is unable to consent to the access.
    - ii. The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.
    - iii. The Protection and Advocacy System has received a complaint on behalf of the recipient or has probably cause to believe based on monitoring or other evidence that the recipient has been subject to abuse or neglect.
  - c. A recipient who has a guardian or other legal representative if all the following apply:
    - i. A complaint has been received by the Protection and Advocacy System or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
    - ii. Upon receipt of the name and address of the recipient's legal representative, the Protection and Advocacy System has contacted the representative and offered assistance in resolving the situation.
    - iii. The representative has failed or refused to act on behalf of the recipient.
- H. The records, data, and knowledge collected for, or by, individuals or committees assigned a peer review of function, including the review function under section 143a (1), are confidential, shall be used only for the purposes of peer review, are not public records, and are not subject to court subpoena. This subsection does not prevent disclosure of individual case records pursuant to this section.
- I. The holder of an individual's record, when authorized to release information for clinical purposes by the individual or the individual's guardian or parent of a minor shall release a copy of the entire medical and clinical record to the provider of mental health services.

### **PSYCHIATRIC PRIVILEGED COMMUNICATIONS**

**POST THIS FORM ON EACH PSYCHIATRIC PATIENT'S RECORD**

**PUBLIC ACT 750 - MENTAL HEALTH CODE**

- A. Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the patient has waived the privilege, except in the circumstances set forth in this section.

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- B. Privileged communications shall be disclosed upon request under one or more of the following circumstances:
- a. If the privileged communication is relevant to a physical or mental condition of the patient that the patient has introduced as an element of the patient's claim or defense in a civil or administrative case or proceeding or that, after the death of the patient has been introduced as an element of the patient's claim or defense by a party to a civil or administrative case or proceeding.
  - b. If the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the patient was informed that any communication could be used in the proceeding.
  - c. If the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competency of the patient or the patient's need for a guardian but only if the patient was informed that any communications made could be used in such a proceeding.
  - d. If a civil action by or on behalf of the patient, or a criminal action arising from the treatment of the patient against the mental health professional for malpractice.
  - e. If the privileged communication was made during an examination ordered by a court, prior to which the patient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.
  - f. If the privileged communication was made during treatment that the patient was ordered to undergo to render the patient competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the patient to stand trial.
- C. In a proceeding in which subsections (1) and (2) prohibit disclosure of a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, the fact that the patient has been examined or treated or undergone a diagnosis also shall not be disclosed unless that fact is relevant to a determination by a health care insurer, health care corporation, nonprofit denial care corporation, or health maintenance organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.
- D. Privileged communications may be disclosed under section 946 to comply with the duty set forth in that section.

CONFIDENTIALITY/DISCLOSURE {MHC 748, 752; AR 7051}

CROSS REFERENCE AND LEGAL AUTHORITY

[A. PUBLIC ACT 258 OF 1974, AS AMENDED - MI MENTAL HEALTH CODE, SECTIONS - 330.1748.](#)

330.1748A, 330.1749, 330.1750, 330.1931

B. MI DEPARTMENT OF COMMUNITY HEALTH ADMINISTRATIVE RULES - R - 330.7051

C. PUBLIC ACT 238 OF 1975, AS AMENDED, CHILD PROTECTION LAW

D. PUBLIC ACT 519 OF 1982, AS AMENDED, ADULT PROTECTION LAW

WAR MEMORIAL BEHAVIORAL HEALTH CENTER POLICY

# War Memorial Hospital

**WRITTEN BY:** Recipient Rights Committee

Date: October 1, 2007

Please refer to Power DMS for the most current edition of this document.

War Memorial Hospital

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Nurse Manager Date: February 4, 2014

**REVIEWED BY:** Corinna Haller, Director of Nursing Date: February 4, 2016

**REVIEWED BY:** Corinna Haller, Director of Nursing Date: December 15, 2016

**REVIEWED/UPDATED BY:** Allison NM Campbell, Recipient Rights Officer  
Date: January 11<sup>th</sup>, 2017

**APPROVED BY:** Recipient Rights Advisory Committee Date: April 28, 2017