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<b>Title</b>	<b>Northern Lakes CMHA Policies</b>
<b>Part 106</b>	<b>Supports and Services – NLCMHA Provided and Contract</b>
<b>Subpart J</b>	<b>Mental Health Code Protected Recipient Rights</b>
<b>Policy No.</b>	<b>106.1020</b>
<b>Subject</b>	<b>Confidentiality, Disclosure, and Privileged Communications (RR)</b>

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### **Applicability**

Policy applies to all NLCMHA activities, operations and sites and to all Employees except members of the governing body. Policy also applies to any Network Provider and its employees, volunteers, or agents that has elected to adopt and adhere to NLCMHA policies and procedures pertaining to Recipient Rights under the terms of its Participating Provider Agreement.

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### **Policy**

Northern Lakes CMHA and its contract providers shall protect the confidentiality and disclosure rights of recipients pursuant to the Michigan Mental Health Code (PA 258 of 1974, MCL 748 and MCL 748a) and Michigan Department of Health and Human Services Administrative Rule 330.7051, which guarantee that 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, shall not be open to public inspection, and shall be disclosed outside Northern Lakes CMHA and its contracted provider network only in the circumstances and under the conditions set forth in this policy.

A summary of Section 748 of the Michigan Mental Health Code shall be made a part a recipient's record at each site where services are provided to him or her.

If an Employee, contract Employee, or volunteer is aware of an apparent or suspected violation of confidentiality rights under this policy, that Employee shall promptly make both an oral and written report to the Northern Lakes CMHA Office of Recipient Rights. The Director of the Office of Recipient Rights shall notify the Compliance Officer and a coordinated investigation shall occur. Substantiated violations of confidentiality will subject the provider to administrative and potentially disciplinary action, up to and including termination.

#### STANDARDS:

##### **A. CONFIDENTIAL RECIPIENT INFORMATION INCLUDES:**

1. The name or other identifying information of a recipient.

2. The fact that an individual has applied for, has, or is receiving mental health services.
3. All information in the Northern Lakes CMHA health record or the records maintained by any provider under contract with Northern Lakes CMHA.
4. Communications by the recipient (oral or otherwise, privileged or non-privileged).
5. Any other information acquired in the course of providing services to the recipient.

**B. DISCLOSURE OF CONFIDENTIAL INFORMATION:**

1. A record shall be kept of all disclosures including:
  - a. The information released.
  - b. To whom the information is released.
  - c. The purpose claimed by the person for requesting the information
  - d. A statement indicating how the disclosed information is germane to the purpose.
  - e. The subsection of section 748 of the act, or other state law, under which a disclosure was made.
  - f. A statement that the receiver of disclosed information was informed that further disclosure shall be consistent with the authorized purpose for which the information was released.
2. If confidential information 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, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.
3. An individual receiving information made confidential by this policy shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.
4. For case record entries made subsequent to the effective date of March 28,1996, information made confidential by this policy shall be 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. Northern Lakes CMHA 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 of the request or prior to discharge from treatment.
5. Except as otherwise prohibited by this policy, when requested, information made confidential by this policy shall be disclosed only under 1 or more of the following circumstances:

- a. Pursuant to orders or subpoenas or 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. A prosecutor may be given non-privileged information or privileged information that may be disclosed pursuant to section 750 (2) of the Michigan Mental Health Code if it contains information relating to participation in proceedings under the act, including all of the following:
  - (i) Names of witnesses to acts that support the criteria for involuntary admission.
  - (ii) Information relevant to alternatives to admission to a hospital or facility.
  - (iii) Other information designated in policies of the provider.
- c. To an attorney for the recipient, with the consent of the recipient, the recipient's guardian with authority to consent, the parent with legal and physical custody of a minor recipient or the minor recipient's attorney. Information made confidential by this policy shall be provided to attorneys, other than prosecuting attorneys, as follows:
  - (i) 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.
  - (ii) 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.
  - (iii) 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.
- 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 for that office to discharge its constitutional responsibility.

- g. To a surviving spouse of the recipient, or, if there is no surviving spouse, to the closest relative of the recipient (i.e. 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 only if the spouse or closest relative has been designated as the personal representative or has obtained a court order.
- 6. Except as otherwise provided by subsection 4 of this policy (i.e. case record entries made subsequent to March 28, 1996 disclosed to a legally competent adult recipient upon the recipient's request), 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 policy may be disclosed to all of the following:
  - a. Providers of mental health services to the recipient. The holder of an individual's record, when authorized to release information for clinical purposes by the individual or the individual's guardian or a parent of a minor, shall release a copy of the entire health record to the provider of mental health services.
  - 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.
  - c. Unless section 4 of this policy applies to the request for information, the director of the facility or program holding the recipient's record may make a determination of detriment to the recipient or others. If the director of the provider declines to disclose because of possible detriment to the recipient or others, there shall be a determination whether part of the information may be released without detriment. A determination of detriment shall not be made if the benefit of the disclosure to the recipient outweighs the detriment. Within 24 hours of receipt of a request for information which has been delayed, the director of the facility or program shall review the request and shall make a determination whether the disclosure would be detrimental.
  - d. The director of the provider shall provide written notification of the determination of detriment and notification of the determination to the person who requested the information. If the person requesting disclosure disagrees with the decision to withhold information based on a determination of detriment, he or she shall may file a Recipient Rights Complaint.
- 7. Information may be disclosed in the discretion of the holder of the record in the following circumstances:
  - a. As necessary in order for the recipient to apply for or receive benefits. The holder of a 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 provider or shall be subject to collection for liability for mental health service.

- b. As necessary for the treatment, coordination of care, or payment for delivery for the mental health services, in accordance with the Health Insurance Portability and Accountabilities Act of 1996, Public Law 104-191.
  - c. 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.
  - d. 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.
8. As required by Federal Law (45 CFR 502 and 45 CFR 164), Northern Lakes CMHA and its contracted providers shall grant a representative of the protection and advocacy system, Disability Rights Michigan, access to all of the following:
- a. The records of 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. The records of a recipient, including a recipient who has died or whose location is unknown, if all of the following apply:
    - (i) Because of mental or physical condition, the recipient is unable to consent to the access, and
    - (ii) The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state, and
    - (iii) The protection and advocacy system has received a complaint on behalf of the recipient or has probable cause to believe based on monitoring or other evidence that the recipient has been subject to abuse or neglect.

If the protection and advocacy system receives a complaint or has probable cause to suspect abuse or neglect of a recipient, the following conditions must be met prior to allowing the protection and advocacy system access to the records of a recipient:

- (i) A request must be received in writing from an authorized representative of the protection and advocacy system, and
- (ii) The Northern Lakes CMHA Chief Executive Officer determines that, in his professional judgment, there is reasonable cause to believe that the recipient has been subjected to abuse or neglect, and

- (iii) The disclosure of information is limited to relevant information expressly authorized by statute or regulation.
- c. The protection and advocacy system shall be granted access to a recipient 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 recipient is in serious and immediate jeopardy, and
  - (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, and
  - (iii) The representative has failed or refused to act on behalf of the recipient.
- 9. If there is a compelling need for mental health records or information to determine whether child abuse or child neglect has occurred or to take action to protect a minor where there may be a substantial risk of harm, a family independence agency caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a mental health professional that a child abuse or neglect investigation has been initiated involving a person who has received services from the mental health professional and shall request in writing mental health records and information that are pertinent to that investigation.

Upon receipt of this notification and request, the mental health professional shall review all mental health records and information in the mental health professional's possession to determine if there are mental health records or information that is pertinent to that investigation. Within 14 days after receipt of a request made under this subsection, the mental health professional shall release those pertinent mental health records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation.

For disclosures under this provision, any legally recognized privilege is abrogated, including:

- a. The physician-patient privilege created in section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.
- b. The dentist-patient privilege created in section 16648 of the public health code, 1978 PA 368, MCL 333.16648.
- c. The licensed professional counselor-client and limited licensed counselor-client privilege created in section 18117 of the public health code, 1978 PA 368, MCL 333.18117.
- d. The psychologist-patient privilege created in section 18237 of the public health code, 1978 PA 368, MCL 333.18237.

To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an individual who in good faith gives access to mental health records or information under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

A duty to report child abuse and neglect does not alter a duty imposed under another statute, including the child protection law, 1975 PA 238, MCL 722.621 to 722.638, regarding the reporting or investigation of child abuse or neglect.

10. Information made confidential by this policy shall be provided to private physicians or psychologists appointed 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 section 750 (1) of the act.
  - 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.

### **C. PRIVILEGED COMMUNICATIONS**

1. Privileged communications includes communication made to psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to another person while the other person is participating in the examination, diagnosis or treatment or a communication made privileged under other applicable state or federal law.
2. 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.
3. Privileged communications shall be disclosed upon request under 1 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 communications 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 competence 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. In 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.
4. 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 dental care corporation, or health maintenance organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.
  5. Privileged communications may be disclosed under section 946 of the Michigan Mental Health Code to comply with the duty to warn set forth in that section.

#### **D. EXCLUSION OF PEER REVIEW RECORDS**

The records, data, and knowledge collected for or by individuals or committees assigned a peer review function by Northern Lakes CMHA or its contracted providers, including the review function under section 143a(1), are confidential, shall be used only for the purposed of peer review, are not public records, and are not subject to court subpoena. This does not prevent disclosure of individual case records pursuant to this policy.

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#### **Procedures**

None.



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