

## Frequently Asked Questions for Providers and Organizations About the MDHHS-5515, Consent to Share Behavioral Health Information

**If you provided services to someone who has experienced domestic violence, sexual assault, stalking, or another crime and would like to release information about the individual, you should refer to Questions 3 and 4. You may also visit [www.michigan.gov/bhconsent](http://www.michigan.gov/bhconsent) for more information.**

### 1. What is the purpose of this form?

The purpose of the form is to enable providers and organizations to share certain types of behavioral health information that have special privacy protections under federal and state law. The Michigan Department of Health and Human Services created this form in compliance with Public Act 129 of 2014, which directs the department to:

*“...develop a standard release form for exchanging confidential mental health and substance use disorder information for use by all public and private agencies, departments, corporations or individuals that are involved with treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability or substance use disorder.”<sup>1</sup>*

### 2. What are my responsibilities under this form and Public Act 129 of 2014?

All public and private agencies, departments, corporations, or individuals involved with the treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability or substance use disorder are required to honor and accept this form as a valid consent to share certain types of health

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<sup>1</sup> PA 129 of 2014 and MCL 330.1141a(1)

information.<sup>2</sup> Individuals and organizations that are subject to the confidentiality requirements under the Victims of Crime Act, Violence Against Women Act, or Family Violence Prevention and Services Act are not required to accept and honor the form.

### **3. Are there situations when MDHHS-5515 should not be used to obtain consent to share behavioral health information?**

Providers receiving federal funding under the Victims of Crime Act, Violence Against Women Act, and/or Family Violence Prevention and Services Act should not use MDHHS-5515 because they are subject to stringent consent requirements under these federal laws that are not satisfied by the form. These requirements are in place to address the heightened safety and privacy concerns that victims of domestic violence, sexual assault, stalking, or other crimes may have. These individuals may need additional safeguards for their behavioral health information.

For guidance on addressing issues related to consent and the provision of services for domestic violence, sexual assault, stalking, or other crimes, please refer to [www.michigan.gov/bhconsent](http://www.michigan.gov/bhconsent).

### **4. Some of the individuals that I serve have experienced domestic violence, sexual assault, stalking, or other crimes, but I do not receive federal funding for the Violence Against Women Act, Family Violence Prevention and Services Act, or Victim of Crimes Act. Should I use the behavioral health consent form?**

If you provide services to individuals who have experienced domestic violence, sexual assault, stalking, or another crimes but you do not receive federal funding under these programs, you should evaluate whether additional safeguards may need to be in place before information is shared. You may want to speak with the individual to see if additional safeguards are necessary. You may visit [www.michigan.gov/bhconsent](http://www.michigan.gov/bhconsent) for more information.

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<sup>2</sup> PA 129 of 2014 and MCL 330.1141a(1)

## **5. Do I have to use this form? Can I still use my own form? Can I still accept other release forms besides the behavioral health consent form?**

You are required to honor this form when presented with it unless you are held to more stringent requirements under federal law. However, you may still use your own consent form or accept other consent forms that are in compliance with federal and state confidentiality laws.

## **6. Why does the department encourage entities to use the behavioral health consent form?**

The behavioral health consent form allows individuals, providers and other organizations to use a common consent form to comply with relevant federal and state confidentiality laws. The use of the behavioral health consent form will reduce confusion, simplify the process, and enable more meaningful use of an individual's health information.

## **7. What constitutes “accepting” the form?**

A provider or entity that receives the form must accept the form and disclose the information to the parties listed on the form as authorized.

## **8. Is the behavioral health consent form compliant with the Health Insurance Portability and Accountability Act (HIPAA) as well as other federal and state privacy laws and regulations?**

The Michigan Department of Health and Human Services has designed the behavioral health consent form to be compliant with the following federal and state laws:

- 42 Code of Federal Regulations Part 2

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The Substance Abuse and Mental Health Services Administration issued a final rule, which is known as 42 Code of Federal Regulations Part 2, to regulate the confidentiality of substance use disorder records. MDHHS designed the behavioral health consent form to meet the requirements of this regulation. The form can be used to consent to the disclosure of substance use disorder records from Part 2 programs.

- Michigan Mental Health Code

The Michigan Mental Health Code requires written consent to share mental health records for most purposes. MDHHS designed the behavioral health consent form to meet the requirements of the statute.

The Michigan legislature amended the Michigan Mental Health Code under Public Act 559 of 2016 to allow for the sharing of mental health records for the purposes of treatment, payment, and coordination of care in accordance with HIPAA.<sup>3</sup> Under the revised statute, health care providers and health plans do not need written consent to share mental health records for treatment, payment, and coordination of care. Health care providers and health plans do not need to complete the behavioral health consent form to share this information for the purposes of treatment, payment, and coordination of care.

Health care providers and health plans may still use the behavioral health consent form to obtain consent to disclose mental health records for other purposes. These purposes may include health care operations that are not defined as “coordination of care”.

- Health Insurance Portability and Accountability Act

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<sup>3</sup> PA 559 of 2016 and MCL 330.1748

HIPAA does not require an authorization or consent in order to use or disclose an individual's protected health information for the purpose of treatment, payment, or health care operations. The disclosures made under the behavioral health consent form are to diagnose, treat, manage, and receive payment for an individual's health care needs. These purposes fit within HIPAA's permissible disclosures without consent or authorization. Therefore, a separate HIPAA-compliant authorization is not required.

However, health care providers and other organizations may choose to have individuals complete a HIPAA-compliant authorization in order to share information for purposes other than treatment, payment, and health care operations. Providers and other organizations should consult with their legal counsel on whether individuals should complete a separate HIPAA authorization for other purposes.

## **9. What types of providers and organizations are regulated under 42 Code of Federal Regulations Part 2? How does SAMHSA define a Part 2 program?**

A Part 2 program can be defined as a program that (1) holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment and (2) is federally-assisted. SAMHSA defines "federally-assisted" under § 2.12(b) under 42 Code of Federal Regulations Part 2.<sup>4</sup> SAMHSA also defines program<sup>5</sup> as:

1. An individual or entity (other than a general medical facility) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or

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<sup>4</sup> 42 CFR Part 2 § 2.12 (b)

<sup>5</sup> 42 CFR Part 2 § 2.11

2. An identified unit within a general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or
3. Medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers.

### **10. Why does the form not contain all of the elements required for an authorization under HIPAA?**

HIPAA does not require an authorization in order to use or disclose an individual's protected health information for treatment, payment or health care operations purposes. A HIPAA authorization may need to be completed if information is to be disclosed outside of the treatment, payment and health care operations exceptions under HIPAA. For example, a HIPAA authorization is required to share information for marketing purposes and to share psychotherapy notes. Health care providers and other organizations should consult with their legal counsel on whether individuals should complete a separate HIPAA authorization for other purposes.

### **11. What kind of information can be disclosed under the behavioral health consent form?**

Under HIPAA and the Michigan Mental Health Code, covered entities may share most types of health information for the purposes of payment, treatment, and coordination of care. Public Act 129 of 2014 does not require entities to use the behavioral health consent form to share information that could be shared exclusively under the requirements of HIPAA or the Michigan Mental Health Code. Additional information on sharing health information under HIPAA and the Michigan Mental Health Code is described under Question 8.

Under certain circumstances, entities must receive specialized consent to share information about the following types of services under federal and/or state law:

- Behavioral health or mental health services that are provided by the Michigan Department of Health and Human Services, a Community Mental Health Service Provider, or an entity under contract with the Michigan Department of Health and Human Services or a Community Mental Health Service Provider.<sup>6</sup> Written consent is required when mental health records are shared for purposes other than payment, treatment, and coordination of care.
- Diagnosis, referral, and/or treatment for an alcohol or substance use disorder.<sup>7</sup>

The Michigan Department of Health and Human Services designed the behavioral health consent form to allow for the release of these types of information consistent with HIPAA and other federal and state confidentiality laws. The behavioral health consent form cannot be used to consent to the sharing of psychotherapy notes.

## **12. What are psychotherapy notes?**

HIPAA defines psychotherapy notes as “notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are separate from the rest of the patient’s medical record. Psychotherapy notes do not include any information about medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, or results of clinical tests; nor do they include summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

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<sup>6</sup> PA 258 of 1974 and MCL 330.1748

<sup>7</sup> 42 CFR Part 2

Psychotherapy notes also do not include any information that is maintained in a patient's medical record."<sup>8</sup>

The behavioral health consent form cannot be used to consent to the sharing of psychotherapy notes.

### **13. When do I need consent to share health records related to communicable diseases?**

MDHHS-5515 is a behavioral health consent form that individuals can use to authorize the sharing of behavioral health information. Individuals may use this form to consent to sharing of mental health records and substance use disorder records.

Most types of communicable disease information can be shared under HIPAA without consent. Additionally, the Michigan Public Health Code requires the reporting of communicable diseases to public health officials.<sup>9</sup> However, there may be other instances when your provider must obtain your consent to share your communicable disease information.<sup>10</sup> Health care providers and other organizations should review the Michigan Public Health Code and other applicable statutes to determine the requirements for sharing communicable disease information and reporting information to public health officials.

### **14. Are providers and community-based organizations who participate in the Ryan White HIV/AIDS Program required to use the standard consent form?**

The Ryan White HIV/AIDS Program provides a comprehensive system of care that includes primary medical care and essential support services for people living with HIV who are uninsured or underinsured. Providers and community-based organizations in the Ryan White program that do not provide mental health and substance

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<sup>8</sup> 45 CFR 164.501

<sup>9</sup> PA 368 of 1978, MCL 333.1101 et seq

<sup>10</sup> PA 368 of 1978, MCL 333.5131 et seq

use disorder treatment directly may not be required to accept and honor the standard consent form. Each provider and community-based organizations should make an individual determination about whether they offer these services and would therefore be subject to the requirements of Public Act 129. Providers and community-based organizations may reach out to Ryan White program staff at MDHHS to seek guidance and technical assistance on this issue. Providers and community-based organizations may still use the standard consent form to obtain behavioral health information from other providers for the purposes of diagnosis, treatment, care management, and payment.

### **15. Can I re-disclose information shared with me under the behavioral health consent form?**

The behavioral health consent form allows an individual to designate providers and organizations that may share information among each other, as specified in the form. When information is disclosed through the consent form, the information may only be re-disclosed under the following circumstances:

- **Mental Health Records:** The Michigan Mental Health Code requires that an individual who receives mental health records shall disclose the records to others “only to the extent consistent with the authorized purpose for which the information was obtained”.<sup>11</sup> The behavioral health consent form allows individuals to consent to the disclosure of mental health records for the purposes of diagnosis, treatment, management, and payment. Entities that are listed on the consent form may therefore re-disclose information for the purposes of diagnosis, treatment, management, and payment.
- **Substance Use Disorder Records:** Federal law generally prohibits the re-disclosure of substance use disorder information unless the re-disclosure is expressly permitted by the written

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<sup>11</sup> PA 258 of 1974 and MCL 330.1748 (3)

consent. Federal law requires that a specific notice regarding re-disclosure accompany any disclosure of substance use disorder information that is shared with the individual's written consent.<sup>12</sup>

## **16. How should the individuals that I serve list the entities with which they would like to share their health information?**

Each individual can choose (1) which individuals and organizations should be able to see and share his or her information under Sub-Section 2a and (2) whether he or she would like his or her information to be shared with organizations that facilitate the electronic exchange of health information under Sub-Section 2b. These choices are explained in greater detail on the next page.

- Choice #1: The individual may choose to share his or her health information with specific individuals and organizations under Sub-Section 2a. The individual should list (1) the name of the individual or organization for whom the form is being completed and (2) any other individual or organization with whom he or she would like his or her health information shared. The individual should include the specific name of the individual or organization that is given permission to share and receive information as opposed to a general designation.
- Choice #2: The individual may also choose to share his or her health information with organizations that facilitate the electronic exchange of health information under Sub-Section 2b. This may include Health Information Exchanges, Health Information Organizations, and Health Information Networks.
  - The provider or health plan who has asked the individual to complete the form is responsible for identifying which Health Information Exchanges, Health Information Organizations, and Health Information Networks should be listed on the form. The provider or health plan should include the specific name

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<sup>12</sup> 42 CFR 2.32

of the organization that is given permission to share and receive information as opposed to a general designation.

- After the provider or health plan has listed any Health Information Exchanges, Health Information Organizations, or Health Information Networks at the bottom of Section 2b, the individual has three options in terms of authorizing the electronic exchange of health information:
  - Option #1: The individual may choose to consent to the sharing of his or her information through the organizations that are listed on the bottom of Section 2b.
  - Option #2: The individual may choose to not consent to the sharing of his or her information through the organizations that are listed on the bottom of Section 2b.
  - Option #3: The individual may choose to consent to sharing his or her information through the organizations listed below with all of my past, current, and future treating providers. This option qualifies as a “general designation” under 42 Code of Federal Regulations Part 2. Under this option, the individual consents to share health information with individuals and organizations that (1) have a “treating provider relationship” with the individual and (2) participate in the organization that is listed under Section 2b. If the individual uses this option, the individual may request and is entitled to receive a “list of disclosures” that identifies all individuals and organizations to which his or her substance use disorder information has been disclosed.

Please note that a provider or organization who is listed on the form may share information with any other individual or organization that is also listed on the form.

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## **17. What is an organization that facilitates the electronic exchange of health information?**

Organizations that facilitate the electronic exchange of health information are known as either Health Information Exchanges, Health Information Organizations, or Health Information Networks. For more information, please visit the following webpage:

<https://www.healthit.gov/providers-professionals/health-information-exchange/what-hie>

## **18. What constitutes a “treating provider relationship”?**

Under federal law, a “treating provider relationship”<sup>13</sup> means that:

1. the patient is, agrees to, or is legally required to be diagnosed, evaluated, and/or treated, or agrees to accept consultation, for any condition by an individual or entity, and
2. the individual or entity undertakes or agrees to undertake diagnosis, evaluation, and/or treatment of the patient, or consultation with the patient, for any condition.

This definition applies regardless of whether there has been an actual in-person encounter.

## **19. Under federal law, an individual who consents to share his or her substance use disorder records with all of his or her past, current, and future treating providers can request a “list of disclosures”? What are the requirements for providing a list of disclosures under federal law?**

If the individual has consented to disclose his or her health information with a general designation, the individual must be provided upon his or her request with a list of individuals or organizations to which his or

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<sup>13</sup> 42 CFR Part 2 § 2.11

her information has been disclosed. The request must be made in writing and must be limited to disclosures that were made within the past two years. The responsibility for producing the list of disclosures belongs to the intermediary listed under Sub-Section 2b as opposed to the provider.<sup>14</sup> The intermediary must respond in 30 or fewer days to the request. The entity must provide for each disclosure (1) the names of the entities to which the disclosure was made, (2) the date of the disclosure, and (3) a brief description of the disclosed information.<sup>15</sup>

The behavioral health consent form includes a statement where individuals confirm their understanding that they must be provided with a list of entities to which their health information has been disclosed upon their request.

## **20. Can this form be used to consent to the disclosure of information to family members and friends?**

Yes, this form may be used to consent to the disclosure of mental health and substance use disorder information by listing family members and friends of the individual on the form. The following briefing document from the Office for Civil Rights provides guidance about sharing physical health information to family and friends under HIPAA.

<https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/consumers/sharing-family-friends.pdf>

## **21. Can a guardian complete this form and provide consent to share health information on behalf of the individual?**

A guardian with an appropriate court order may complete this form and provide consent to share health information on behalf of the individual. Health care providers and other organizations should review the guardianship order to determine whether a guardian has

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<sup>14</sup> 42 CFR Part 2 § 2.13 (d)(2) and 42 CFR Part 2 § 2.13 (d)(3)

<sup>15</sup> 42 CFR Part 2 § 2.13 (d)

the legal authority to make health care decisions. For more information, please review the following document:

[https://www.networkforphl.org/\\_asset/kbctjq/MinorsPrivacy.pdf](https://www.networkforphl.org/_asset/kbctjq/MinorsPrivacy.pdf)

## **22. Can this form be used by a minor to consent to the sharing of health information, or is parental consent required?**

A minor may complete this form and consent to the sharing of health information without parental consent when permitted under state law. For more information, please review the following document on this issue:

[https://www.networkforphl.org/\\_asset/kbctjq/MinorsPrivacy.pdf](https://www.networkforphl.org/_asset/kbctjq/MinorsPrivacy.pdf)

## **23. Can the individual limit what information will be shared?**

Under Section 3 on the form, individuals have two options for deciding what information they would like to share. The two options are listed below.

- The individual may choose to share all of his or her behavioral health and substance use disorder information. This does not include “psychotherapy notes.”
- The individual may choose to only share specific records. If the individual chooses this option, the individual must list under Section 3 what records he or she does want shared.

If the individual chooses to only share specific records, the individual should identify the types of information with sufficient specificity for providers to allow the provider to comply with the consent form. Examples of types of information may include (but are not limited to) diagnostic information, medications and dosages, lab tests, allergies, substance use history summaries, trauma history summary, elements of a medical record such as clinical notes and discharge summary,

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employment information, and living situation and social supports. Health care providers should speak individuals about the benefits and risks of sharing only part of their health information.

**24. When I send a completed MDHHS-5515 form to another provider or organization, can I include a cover letter to help explain the request to share health information?**

Yes, health care providers and other organizations may use a cover letter in conjunction with a completed MDHHS-5515 form in order to provide further details about the request to share health information. The Michigan Department of Health and Human Services has not issued a standard template for a cover letter that could be used with a completed MDHHS-5515 form. Health care providers and other organizations are encouraged to design their own cover letters to meet their needs.

Health care providers or organizations that are designing their own cover letter templates could consider including the following elements as part of that document:

- A field where the name of the requesting organization is listed
- A field where the contact information for the requesting organization is listed
- A section where the types of records being requested are described in further detail
- Specific records or pieces of information that are being requested
- Specific time period for records that are being requested

**25. If I receive a completed MDHHS-5515 form from another health care provider or organization, is there any information that**

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## **I should include with any records that I send to the requesting organization?**

Yes, if you will be sharing any substance use disorder information that is covered under 42 CFR Part 2, you should include a re-disclosure notice with any records that you share with the requesting organization. A re-disclosure notice should include the following language:

*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 information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed 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 (§ 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65.<sup>16</sup>*

## **26. Do I need to have the individual sign the behavioral health consent form every year?**

The form is designed so that an individual may identify the length of time that their consent is active under Section 4. If an individual does not complete the field in Section 4, his or her consent will expire after one year. An individual must renew his or her consent form each year. The form also allows the individual to identify a specific event or condition which would trigger the expiration of his or her consent.

## **27. What methods of communication can I use to share health information once the individual has provided consent?**

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<sup>16</sup> 42 CFR Part 2 § 2.32 (a)

Providers and organizations may share health information (1) verbally, (2) through mail or fax, or (3) electronically. Providers and organizations should consider how to comply with an individual's wishes when determining how to send information. Providers and organizations may only share information with an organization that facilitates the electronic exchange of information if the organization is listed on the consent form under Sub-Section 2b. A provider should also not disclose information electronically if there is no way to electronically separate health information that cannot be disclosed from the other health information that may be disclosed.

**28. If my organization is integrating this form into an Electronic Health Record systems, to what extent can the form be electronically reformatted and still be valid?**

Health care providers and other organizations may choose to integrate the form into their Electronic Health Record systems. Providers and other organizations must include all of the content from the form within the Electronic Health Record system for any completed consents to be valid. Providers and other organizations should also use caution before making significant formatting changes to the form during the integration process. While minor formatting changes may be permissible, substantial alteration of the formatting of the form may invalidate the form. The Michigan Department of Health and Human Services will review significant formatting changes on a case-by-case basis to determine whether the form is still valid.

**29. How should my organization handle the withdrawal of consent by an individual?**

An individual may withdraw his or her consent verbally or in writing. A provider should retain a copy of the withdrawal and provide a copy to the individual if the individual withdraws consent in writing. The entity should inform the individual that he or she should notify all providers and organizations listed on the form that consent has been withdrawn.

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The entity may also choose to assist the individual with sending a copy of withdrawal to other providers or organizations on the form.

If the individual withdraws consent verbally, the entity should document the time, place, and manner of the withdrawal for the entity's records. The entity should also share a copy of the withdrawal with the individual. The entity should inform the individual that he or she should notify all providers and organizations listed on the form that consent has been withdrawn. The entity may choose to assist the individual with sending a copy of revocation to other providers or organizations on the form.

### **30. What resources can I share with individuals to assist them with the consent process?**

The Michigan Department of Health and Human Services developed several resources that may be shared with individuals. The most recent versions of these documents are available on the Michigan Department of Health and Human Services website at [www.michigan.gov/bhconsent](http://www.michigan.gov/bhconsent).

### **31. If I have questions about the form or Public Act 129 of 2014, who should I contact?**

For questions about the Behavioral Health Consent form or Public Act 129 of 2014, please contact the Michigan Department of Health and Human Services by phone at 844-275-6324, online at [www.michigan.gov/bhconsent](http://www.michigan.gov/bhconsent), or by email at [MDHHS-BHConsent@michigan.gov](mailto:MDHHS-BHConsent@michigan.gov).



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