



## The Protected Health Information (PHI) Consent Tool Quick Tips

Welcome to the PHI Consent Tool Quick Tips – important information that can help reduce the confusion around when an individual’s consent is necessary to share general and behavioral health PHI.

NOTE: The word “consent” is used frequently throughout the Consent Tool and is meant to refer to an individual’s permission to share their PHI rather than permission for treatment.

### Disclaimer

This PHI Consent Tool Quick Tips document has been prepared for educational purposes only. Nothing in this document is intended as, nor should be relied upon, as legal advice. Any party that is contemplating the use or disclosure of PHI for any purpose is encouraged to consult with their legal counsel. This document is meant to be a quick reference guide. The full PHI Consent Tool contains comprehensive information about navigating consent decisions.

Due to the legislative ambiguity surrounding the applicability of Chapter 2A of the Michigan Mental Health Code, the PHI Consent Tool takes an expansive view, protecting the confidentiality/privacy of SUD/SUD treatment information held by any hospital, clinic, organization, or health professional providing treatment to individuals. This wider view of the applicability of Chapter 2A ensures greater protection for the individual, requiring consent before sharing SUD/SUD treatment information. Should state law clarify/change the rules, the PHI Consent Tool will be updated accordingly.

## Quick Tips for Simplifying the Exchange of Behavioral Health, General Medical, and Domestic Violence PHI in Michigan

1. Mental and general medical health information (not including substance use disorder information or psychotherapy notes) may be disclosed without an individual's consent for purposes including, but not limited to:
  - a. Treatment
  - b. Coordination of care
  - c. Payment for the delivery of mental health services
  - e. De-identified information for research
  - f. "Duty to warn" situations (i.e., threats of serious and imminent harm made by an individual)
  - g. Mandatory reporting (i.e., elder and/or child abuse and neglect)
  
2. If an adult individual requests their mental or general medical health record (not including substance use disorder information or psychotherapy notes) from a covered entity, then the covered entity must comply with this request, unless any one of the following apply:
  - a. The individual has a legal guardian
  - b. The individual has been deemed legally incompetent
  
3. Neither an individual, legal guardian, nor personal representative have the right to access psychotherapy notes, and a covered entity cannot make most disclosures about psychotherapy notes, without an individual's consent.
  
4. The disclosure of substance use disorder (SUD) information requires the use of a **behavioral health standard consent form/MDHHS-5515** (or equivalent), unless the disclosure falls under any one of the following:
  - a. Medical emergencies
  - b. Specific court orders (i.e., to determine if an individual is under treatment; treatment hearings for minors)
  - c. Mandatory reporting (i.e., elder and/or child abuse and neglect)
  - d. "Duty to Warn" situations (i.e., threats of serious and imminent harm made by an individual)
  - e. Information de-identified for research
  - f. Information de-identified for financial audits
  - g. Information de-identified for program evaluations
  
5. Title 42 CFR Part 2 rules say that an individual must consent to the sharing of SUD PHI and that there are very few instances where SUD PHI can be released without an individual's consent. Not everyone is subject to Part 2 rules; however, many are subject to Chapter 2A of the Michigan Mental Health Code (§330.1263), which states that unless the disclosure falls under the seven scenarios outlined above, consent is necessary. Entities may determine for themselves whether or not Chapter 2A applies to their work.

6. If you receive federal funding under the Family Violence Prevention and Services Act (FVPSA), the Victims of Crime Act (VOCA), and/or the Violence Against Women Act (VAWA), and you have provided someone with services for domestic abuse, sexual assault, stalking, or other crimes, you must use a specialized form to obtain consent. The National Network to End Domestic Violence (NNEDV) has developed sample **Client Limited Release of Information forms** for federal grantees that you may adapt (available in English and Spanish).
7. If you do not receive federal funding under FVPSA, VOCA, and/or VAWA, and you have provided someone with services for domestic abuse, sexual assault, stalking, or other crimes, your decision whether to use a standardized (e.g., MDHHS-5515) or specialized (e.g., NNEDV) consent form should be informed by a discussion about the potential risks and benefits of information-sharing with the person you are serving, keeping in mind that standard consent forms may not address the heightened safety and privacy concerns the person may have.
8. Refusal to share mental or general medical health information when it is legal to do so not only jeopardizes individual safety and negatively impacts care coordination, but could also be viewed as Information Blocking. Information blocking will result in financial penalties in accordance with Information Blocking Rules based on the 21st Century Cures Act. For more information on the 21st Century Cures Act and information blocking, see the **proposed rule**.