



## The Protected Health Information (PHI) Consent Tool

Welcome to the PHI Consent Tool. The goal of this Consent Tool is to reduce confusion about when an individual's consent is necessary to share general and behavioral health PHI.

The U.S. Department of Health and Human Services (HHS) provides [helpful resources](#) that give federal guidance around an individual's consent to sharing PHI. However, these resources do not address the specific requirements of Michigan laws and regulations.

This user-friendly Consent Tool includes easy-to-navigate grids that reference both State of Michigan and federal laws and regulations to provide clear guidance about when consent is necessary for common PHI requests.

The Consent Tool is intended to increase the flow of PHI from clinician to clinician, particularly with respect to behavioral health information, resulting in improved care coordination across the state of Michigan.

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 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 its legal counsel.

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.

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# 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).

- 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.
- 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**.

## How to Use the PHI Consent Tool and the Grids

- The General Grid references five pieces of legislation (three State laws and two federal laws) listed horizontally across the page, pertaining to the sharing of any type of PHI.

**Reason Category: ALL**  
 (Self, Continuity of Care, Personal Representative, Friends/Family, Health Care Claim Payment, Facility Operations, Research, Marketing, Psychotherapy Notes)

	LEGISLATION				
<b>REASON FOR REQUEST</b>	<b>Michigan Mental Health Code Act 258 of 1974</b> <i>(Behavioral Health PHI not including SUD)</i>	<b>Michigan Public Health Code Act 368 of 1978</b>	<b>Michigan Medical Records Access Act, Act 47 of 2004</b>	<b>Health Insurance Portability and Accountability Act (HIPAA) of 1996.</b> Expanded to include electronic PHI in 2009.	<b>Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records - 1975</b> <i>(in combination with MI Mental Health Code as it relates to SUD)</i>
The individual asks a covered entity for some or all of their own	▲	▲	▲	▲	◐

- The other Grid references the three federal domestic violence (DV) laws, listed across the page, for those that receive federal funding under those pieces of legislation.

FVPSA, VOCA, VAWA

	LEGISLATION		
<b>REASON FOR REQUEST</b> PHI requests received by a covered entity and whether patient authorization is required based on state and federal laws for that type of request.	<b>Family Violence Prevention and Services Act (FVPSA) - 1984/2018</b>	<b>Victims of Crime Act (VOCA) - 1984/2002</b>	<b>Violence Against Women Act (VAWA) - 1994/2019</b>

- Each legislation listed at the top of the Grids is hyperlinked to its actual webpage so that you can learn more.
- There are additional pieces of legislation that apply to a limited number of reasons for PHI requests and contain certain caveats. The caveats are footnoted on the Grids and are listed starting on page 24.

There are 32 common reasons a request for PHI might be made. Reasons are listed vertically on the left side of the Grids.

These “reasons” are broken into categories by age (adults and minors) as well as circumstances dealing with emergencies, legal, and victims regardless of age (i.e., “All”).

**Reason Category: ALL**  
 (Self, Continuity of Care, Personal Representative, Friends/Family, Health Care Claim Payment, Facility Operations, Research, Marketing, Psychotherapy Notes)

<b>REASON FOR REQUEST</b>
The individual asks a covered entity for some or all of their own health records.
For any individual's care team to be able to provide continuity of care for medical and/or behavioral health issues.
For a covered entity to inform a individual's personal representative about their care.

The following table summarizes how the Grids are broken out by reason category to help you determine which to use.

**Table 1 : Guide to Help Determine Which PHI Consent Tool Grid to Use**

GRID NAME	REASON CATEGORY
General Grid	1. ALL (Adults and Minors)
	2. ADULT SUD
	3. ADULT VICTIM
	4. MINORS (SUD, Public Health, BH, Abuse)
	5. MINORS (Reproductive Health)
	6. EMERGENCY (Adults and Minors)
	7. LEGAL (Adults and Minors)
Family Violence (FVPSA), Victims of Crime (VOCA), and Violence Against Women Legislation (VAWA) Grid	1. When NO individual consent is needed

There are five colored shapes that will help you to determine if an individual’s consent is necessary based on the reason for the request, and whether your facility receives specific federal funds.

**What Do the Colored Shapes Mean?**

 Individual authorization necessary	A <b>RED</b> stop sign means an individual’s consent is necessary to release PHI for that particular reason, under that piece of legislation.
 Individual authorization NOT needed	A <b>GREEN</b> circle means an individual’s consent is <b>not</b> necessary to release PHI for that particular reason, under that piece of legislation.
 Not addressed by that legislation	A <b>GRAY</b> square means that this particular reason is not referenced within that legislation and has no bearing on a Yes or No answer.
 Clinician discretion applies	A <b>YELLOW</b> triangle means that a clinician is allowed to use their professional judgment in determining if it is safe to release PHI without consent.
 SUD caveats apply	A <b>PURPLE</b> diamond means that if the PHI being requested contains any mention of SUD (and is not for one of the seven reasons defined in Quick Tip #4) then an individual’s consent will be necessary per the Michigan Mental Health Code for SUD in adults, and may be necessary for SUD in minors (see Caveat #11).

## How Do I Know Which Legislation to Follow?

You will first need to determine what kind of PHI is being sought:

1. **Behavioral Health (BH)** records
2. Records with **mention of SUD**
3. Records for someone who has experienced **DV, sexual assault (SA), stalking, etc.**
4. **All other records** not containing BH, SUD, or DV.

Once you determine what kind of PHI is being sought and who is seeking the PHI, you can then determine which column on that Grid to follow. For records that pertain to a person who has experienced DV, SA, stalking, etc., you will need to use the FVPSA, VOCA, VAWA Grid on page 16 . For all other requests, take the following into consideration:

1. Behavioral health records: pay special attention to the Michigan Mental Health Code and HIPAA columns, always following the one that provides more protection to the individual who is the subject of the PHI.
2. Records with mention of SUD: pay special attention to the Title 42 CFR Part 2 column and the respective caveats that take the Michigan Mental Health Code into consideration.
3. Records without the mention of BH and/or SUD or DV, etc.: pay special attention to the Michigan Public Health Code and HIPAA columns, always following the one that provides more protection to the individual who is the subject of the PHI.

**Table 2 : Guide to Help Determine Which Legislation to Follow**

IF RECORD INVOLVES	THEN REVIEW
BH	MI Mental Health Code <i>and</i> HIPAA
SUD	Title 42 CFR Part 2 <i>and</i> caveats regarding MI Mental Health Code
DV / SA / Stalking	FVPSA, VOCA, VAWA
All others	MI Public Health Code <i>and</i> HIPAA

# Example of How to Use the Grids

## Example #1

Your clinic, which provides both behavioral health and family medical care services, receives a request from Dr. Smith, an endocrinologist, for notes from Mr. Doe’s last visit and corresponding lab work. Dr. Smith has asked for these in order to coordinate care for Mr. Doe’s diabetes.

1. This request is not related to DV, so use the Grid on page 8 with Reason Category ALL.

**Grid: Reason Category - ALL** ..... 8  
 (Self, Continuity of Care, Personal Representative, Friends/Family, Health Care Claim Payment, Facility Operations, Research, Marketing, Psychotherapy Notes)

2. Upon reading the Reason For Request descriptions, you see: “For any individual’s care team to be able to provide continuity of care for medical and/or behavioral health issues.”

Reason Category: ALL  
 (Self, Continuity of Care, Personal Representative, Friends/Family, Health Care Claim Payment, Facility Operations, Research, Marketing, Psychotherapy Notes)

### LEGISLATION

REASON FOR REQUEST	Michigan Mental Health Code Act 258 of 1974 <i>(Behavioral Health PHI not including SUD)</i>	Michigan Public Health Code Act 368 of 1978	Michigan Medical Records Access Act, Act 47 of 2004	Health Insurance Portability and Accountability Act (HIPAA) of 1996. Expanded to include electronic PHI in 2009.	Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records -1975 <i>(in combination with MI Mental Health Code as it relates to SUD)</i>
The individual asks a covered entity for some or all of their own health records.	1	2	2	2	
For any individual's care team to be able to provide continuity of care for medical and/or behavioral health issues.					3
For a covered entity to inform a individual's personal representative about their care.	4	4	2	4	5
For a covered entity to inform a spouse, family member, or friend about a individual's care.		6		6	*
To assist a covered entity in determining medical insurance eligibility, performing medical billing and collections activities, determining medical necessity, for utilization review (activities related to getting					

3. On that same line, there are two green circles, a gray square, a green circle, and a purple diamond.

4. You then need to determine whether or not there is any mention of SUD in Mr. Doe’s record. You see a refill authorized for Antabuse for treatment of alcohol use disorder that is mentioned in the notes along with the details of Mr. Doe’s visits addressing his uncontrolled blood sugar.

5. Because there is mention of SUD, you need to refer to the Title 42 CFR Part 2 column, the federal law pertaining to privacy and security of SUD records. Here there is a purple diamond with the number 3 next to it. This means you must refer to Caveat #3.

6. Caveat #3 references the Michigan Mental Health Code as it relates to SUD, offering an individual more protection than Title 42 CFR Part 2 and HIPAA. The PHI Consent Tool takes a wider view of the applicability of Chapter 2A of the Michigan Mental Health Code, ensuring greater protection for the individual and requiring consent before sharing SUD/SUD treatment information.

7. Mr. Doe may choose to have you share his record, but **not include** the mention of his alcohol abuse disorder and subsequent Antabuse refill, only including information about his diabetes. The consent must spell out exactly what he will allow to be shared, as well as to whom it can be shared, and for how long the consent is valid. If Mr. Doe does not give consent for his SUD information to be shared, then you can still share the rest of the record with the SUD information redacted.

## Reason Category: ALL

(Self, Continuity of Care, Personal Representative, Friends/Family, Health Care Claim Payment, Facility Operations, Research, Marketing, Psychotherapy Notes)

## LEGISLATION

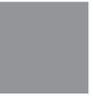
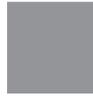
REASON FOR REQUEST	<u>Michigan Mental Health Code Act 258 of 1974</u> <i>(Behavioral Health PHI not including SUD)</i>	<u>Michigan Public Health Code Act 368 of 1978</u>	<u>Michigan Medical Records Access Act 47 of 2004</u>	<u>Health Insurance Portability and Accountability Act (HIPAA) of 1996.</u> Expanded to include electronic PHI in 2009.	<u>Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records - 1975</u> <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
The individual asks a covered entity for some or all of their own health records.	 1	 2	 2	 2	
For any individual's care team to be able to provide continuity of care for medical and/or behavioral health issues.					 3
For a covered entity to inform an individual's personal representative about their care.	 4	 4	 2	 4	 5
For a covered entity to inform a spouse, family member, or friend about an individual's care.		 6		 6	 *
To assist a covered entity in determining medical insurance eligibility, performing medical billing and collections activities, determining medical necessity, for utilization review (activities related to getting medical claims paid).					 *
For the covered entity to perform facility operations (certain administrative, financial, legal, and quality improvement activities that are necessary to run the business).					 7
For a covered entity to provide de-identified information for scientific study or research purposes.					
For a covered entity to report STIs, communicable diseases, adverse drug reactions, and/or medical device failure for public health.					 8
Communication made to describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of the covered entity making the communication.					
For a covered entity to sell PHI or give to a business associate (BA) to market to individuals or sell PHI.					
To review psychotherapy notes.					

\* Michigan Mental Health Code, as it relates to SUD, appears to be more protective than Title 42 CFR Part 2 in these instances, therefore individual consent is necessary to share SUD PHI.

 Individual consent necessary    
  Individual consent NOT needed    
  Not addressed by that legislation    
  Clinician discretion applies    
  SUD caveats apply

**Reason Category:  
ADULT SUD**

**LEGISLATION**

REASON FOR REQUEST	<u>Michigan Mental Health Code Act 258 of 1974</u> <i>(Behavioral Health PHI not including SUD)</i>	<u>Michigan Public Health Code Act 368 of 1978</u>	<u>Michigan Medical Records Access Act 47 of 2004</u>	<u>Health Insurance Portability and Accountability Act (HIPAA) of 1996. Expanded to include electronic PHI in 2009.</u>	<u>Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records - 1975</u> <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
To share PHI of adult containing any identifying information of current or past SUD with a covered entity. This includes mention of any diagnoses, medications, names of clinicians, or facilities that can be associated with SUD treatment.					

\* Michigan Mental Health Code, as it relates to SUD, appears to be more protective than Title 42 CFR Part 2 **in these instances**, therefore individual consent is necessary to share SUD PHI.

**Reason Category:  
ADULT VICTIM**

**LEGISLATION**

REASON FOR REQUEST	<u>Michigan Mental Health Code Act 258 of 1974</u> <i>(Behavioral Health PHI not including SUD)</i>	<u>Michigan Public Health Code Act 368 of 1978</u>	<u>Michigan Medical Records Access Act 47 of 2004</u>	<u>Health Insurance Portability and Accountability Act (HIPAA) of 1996. Expanded to include electronic PHI in 2009.</u>	<u>Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records - 1975</u> <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
Sharing PHI with a covered entity regarding individuals who have experienced elder abuse, domestic violence, sexual assault, stalking, or other crimes.					
For a covered entity reporting elder abuse, domestic violence, sexual assault, stalking, or other violent crime committed against a individual to law enforcement based on Michigan mandatory reporting laws.					

\* Michigan Mental Health Code, as it relates to SUD, appears to be more protective than Title 42 CFR Part 2 **in these instances**, therefore individual consent is necessary to share SUD PHI.

# Reason Category: MINORS

(SUD, Public Health, Behavioral Health, Abuse)

# LEGISLATION

REASON FOR REQUEST	<u>Michigan Mental Health Code Act 258 of 1974</u> <i>(Behavioral Health PHI not including SUD)</i>	<u>Michigan Public Health Code Act 368 of 1978</u>	<u>Michigan Medical Records Access Act 47 of 2004</u>	<u>Health Insurance Portability and Accountability Act (HIPAA) of 1996. Expanded to include electronic PHI in 2009.</u>	<u>Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records - 1975</u> <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
To share PHI of a minor containing any mention of current or past SUD with a covered entity. This includes mention of any diagnoses, medications, names of clinicians, or facilities that can be associated with SUD treatment.					
For personal representative or spouse of minor individual to access PHI from a covered entity regarding sexually transmitted infections (STI) / HIV when services are provided by clinicians <b>not funded</b> by Title X.					
For personal representative or spouse of a minor individual to access PHI from a covered entity regarding sexually transmitted infections (STI) / HIV when services are provided by clinicians <b>funded</b> by Title X.					
For personal representative of a minor individual to access PHI from a covered entity about general medical care (not including SUD).					
For personal representative of a minor individual to access PHI from a covered entity about in individual behavioral health care (not including SUD).					
For personal representative of a minor individual to access PHI from a covered entity about outpatient behavioral health care (not including SUD).					
School nurse requesting PHI regarding treatment for asthma, ADHD, or immunization.					
For a covered entity's mandatory reporters to report child abuse.					

# Reason Category: MINORS

(Reproductive Health)

# LEGISLATION

REASON FOR REQUEST	Michigan Mental Health Code Act 258 of 1974 <i>(Behavioral Health PHI not including SUD)</i>	Michigan Public Health Code Act 368 of 1978	Michigan Medical Records Access Act 47 of 2004	Health Insurance Portability and Accountability Act (HIPAA) of 1996. Expanded to include electronic PHI in 2009.	Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records - 1975 <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
For personal representative of a minor individual to access PHI from a covered entity regarding contraceptive services provided by clinicians not funded by Title X or Title XIX.					
For personal representative of a minor individual to access PHI from a covered entity regarding contraceptive services provided by clinicians funded by Title X or Title XIX.					
For personal representative of a minor individual to access PHI from a covered entity regarding abortion services when court has issued parental consent waiver.					
For personal representative of a minor individual to access PHI from a covered entity regarding abortion services when parental consent has been given.					
For personal representative of a minor individual to access PHI from a covered entity regarding prenatal and pregnancy-related health care services provided by clinicians <b>not funded</b> by Title X.					
For personal representative of a minor individual to access PHI from a covered entity regarding prenatal and pregnancy-related health care services provided by clinicians <b>funded</b> by Title X.					

 Individual consent necessary

 Individual consent NOT needed

 Not addressed by that legislation

 Clinician discretion applies

 SUD caveats apply

## Reason Category: EMERGENCY

(Adults and Minors)

## LEGISLATION

REASON FOR REQUEST	<u>Michigan Mental Health Code Act 258 of 1974</u> <i>(Behavioral Health PHI not including SUD)</i>	<u>Michigan Public Health Code Act 368 of 1978</u>	<u>Michigan Medical Records Access Act 47 of 2004</u>	<u>Health Insurance Portability and Accountability Act (HIPAA) of 1996.</u> <u>Expanded to include electronic PHI in 2009.</u>	<u>Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records - 1975</u> <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
For covered entities to provide information on individuals that are in the individual's best interest as determined by the covered health care clinician, in the exercise of personal judgment, during severe disaster (hurricanes, fires, earthquakes, etc.) or national public health emergency.		 17		 17	 *
Spouse, family, and/or friends that are involved in the care of an individual are seeking information because the individual has overdosed and/or the individual is incapacitated.	 18	 18		 18	 *

\* Michigan Mental Health Code, as it relates to SUD, appears to be more protective than Title 42 CFR Part 2 in these instances, therefore individual consent is necessary to share SUD PHI.

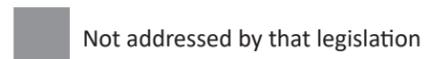
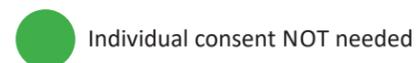
## Reason Category: LEGAL

(Adults and Minors)

## LEGISLATION

REASON FOR REQUEST	<u>Michigan Mental Health Code Act 258 of 1974</u> <i>(Behavioral Health PHI not including SUD)</i>	<u>Michigan Public Health Code Act 368 of 1978</u>	<u>Michigan Medical Records Access Act 47 of 2004</u>	<u>Health Insurance Portability and Accountability Act (HIPAA) of 1996.</u> <u>Expanded to include electronic PHI in 2009.</u>	<u>Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records - 1975</u> <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
A covered entity receives a request under an order, a subpoena of a court of record, or a subpoena of the legislature.					 19
A covered entity feels that there is an immediate threat to health and/or safety of individual and/or someone individual has mentioned so they contact law enforcement.					 20
A covered entity receives a request for PHI as a result of a legal issue without subpoena or court ordered request.	 21	 22		 22	 *

\* Michigan Mental Health Code, as it relates to SUD, appears to be more protective than Title 42 CFR Part 2 in these instances, therefore individual consent is necessary to share SUD PHI.



## Special Requirements Pertaining to Family Violence, Victims of Crime, and Violence Against Women Legislation

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, do not use Patient Authorization Form MDHHS-5515 to obtain that person's consent to release information about behavioral or mental health services, or referrals or treatment for SUD. Instead, use a specialized form designed to address the heightened safety and privacy concerns that this person may have. The National Network to End Domestic Violence has developed a [sample Client Limited Release of Information form](#) for federal grantees that you may adapt (available in English and Spanish).

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, use of [Patient Authorization Form MDHHS-5515](#) is neither prohibited nor required. Your decision whether to use this 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 this form may not address the heightened safety and privacy concerns the person may have.

If you are seeking health information about a person who has received services for domestic abuse, sexual assault, stalking, or other crimes from another provider, you should discuss the potential risks of information-sharing with that person before asking him or her to complete [Patient Authorization Form MDHHS-5515](#) or another consent form. As a best practice, it is preferable to have the other provider obtain the person's consent, regardless of that provider's source of funding. The other provider is likely better able to develop a written consent form that addresses the person's safety and privacy concerns, based on that provider's knowledge of the person's situation.

Information sharing poses important safety risks for individuals who have experienced domestic abuse, domestic violence, sexual assault, or stalking. Crime perpetrators may use identifying and sensitive information to locate or harm victims, and victims who fear the release of this information may not seek support or services for treatment.

If you or your organization receives funding under FVPSA, VOCA, or VAWA, you **may not**:

- Disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected; or
- Disclose, reveal, or release individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of legal incapacity, a court-appointed guardian) about whom information is sought, whether for this program or any other federal, State, tribal, or territorial grant program.

If the release of information is required by statutory or court mandate,

- You must make reasonable attempts to provide notice to victims affected by the release of the information; and
- You must take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

When obtaining consent:

- You must use specialized consent forms tailored to reduce the risk of revealing personally identifying information to abuse or crime perpetrators.
- If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may authorize release of that information without additional consent.
- Consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor.

Learn more information about sharing the PHI of people who have experienced domestic abuse, sexual assault, stalking, or another crime with this [MDHHS FAQ for Providers](#).

## FVPSA, VOCA, VAWA

Reason Category: When **NO** individual consent is needed

### LEGISLATION

REASON FOR REQUEST	<u>Family Violence Prevention and Services Act (FVPSA) - 1984/2018</u>	<u>Victims of Crime Act (VOCA) - 1984/2002</u>	<u>Violence Against Women Act (VAWA) - 1994/2019</u>
For a covered entity to provide de-identified information for scientific study or research purposes.			
For a covered entity reporting domestic violence, sexual assault, stalking, or other violent crime committed against a individual to law enforcement based on Michigan mandatory reporting laws.			
For a covered entity's mandatory reporters to report child abuse.			
A covered entity receives a request under an order, a subpoena of a court of record, or a subpoena of the legislature.			
A covered entity feels that there is an immediate threat to health and/or safety of individual and/or someone individual has mentioned so they contact law enforcement.			

The FVPSA, VOCA, and VAWA grid above summarizes the situations when you may share the information **without** obtaining consent. **For all other scenarios, you must obtain individual consent, and extreme caution must be taken to ensure the privacy and safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families.**

# More Examples of How to Use the Grids

## Example #2

Mrs. Smith, an independent, competent, diabetic adult individual of your primary care practice, not a victim of DV, or other crime, asks for a copy of her most recent lab work so she can track her HbA1c for diabetes control.

1. There are two versions of the Grid: one that references DV, stalking etc., and a Grid that references all other requests for PHI. For this example, you would use the Grid on page 8 with Reason Category ALL.
2. Find the description that matches this example. This request is from an individual about her own records – it is the first Reason listed in the left column.

Reason Category: **ALL**  
 (Self, Continuity of Care, Personal Representative, Friends/Family, Health Care Claim Payment, Facility Operations, Research, Marketing, Psychotherapy Notes)

**LEGISLATION**

REASON FOR REQUEST	Michigan Mental Health Code Act 258 of 1974 <i>(Behavioral Health PHI not including SUD)</i>	Michigan Public Health Code Act 368 of 1978	Michigan Medical Records Access Act, Act 47 of 2004	Health Insurance Portability and Accountability Act (HIPAA) of 1996. Expanded to include electronic PHI in 2009.	Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records -1975 <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
The individual asks a covered entity for some or all of their own health record.	▲ 1	▲ 2	▲ 2	▲ 2	●
For any individual's care team to be able to provide continuity of	●	●	■	●	▲

3. Mrs. Smith is a competent adult who does not have a guardian, the information requested is regarding her diabetes control (not anything behavioral health related), and she does not have a SUD, so you would consult the Michigan Public Health Code and HIPAA columns on this Grid.
4. Both of these columns show a yellow triangle with #2 next to it, denoting a Caveat.
5. Go to the Caveats, which start on page 24, and find Caveat #2.
6. As Mrs. Smith is a competent adult and sharing her HbA1c result will not harm her, proceed with giving Mrs. Smith a copy of her HbA1c report. Remember to follow your facility's process in documenting that she was given a copy of her record.

## Example #3

The wife of an adult individual in your orthopedic practice, Mr. Doe, would like a copy of the MRI he had on his knee.

1. You look in Mr. Doe’s medical record and note the knee injury is related to a motor vehicle accident and not due to domestic or family violence, so you do not use the Grid that addresses the DV legislations. You instead reference the Grid on page 8 with Reason Category ALL.

### Reason Category: ALL

(Self, Continuity of Care, Personal Representative, Friends/Family, Health Care Claim Payment, Facility Operations, Research, Marketing, Psychotherapy Notes)

### LEGISLATION

REASON FOR REQUEST	Michigan Mental Health Code Act 258 of 1974 <i>(Behavioral Health PHI not including SUD)</i>	Michigan Public Health Code Act 368 of 1978	Michigan Medical Records Access Act, Act 47 of 2004	Health Insurance Portability and Accountability Act (HIPAA) of 1996. Expanded to include electronic PHI in 2009.	Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records -1975 <i>(In combination with MI Mental Health Code as it relates to SUD)</i>
The individual asks a covered entity for some or all of their own health records.	 1	 2	 2	 2	
For any individual's care team to be able to provide continuity of care for medical and/or behavioral health issues.					 3
For a covered entity to inform an individual's personal representative about their care.	 4	 4	 2	 4	 5
For a covered entity to inform a spouse, family member, or friend about an individual's care.		 6		 6	 *
To assist a covered entity in determining medical insurance eligibility, performing medical billing and collections activities, determining medical necessity, for utilization review (activities related to getting					

2. This request is from a spouse, and in the Reasons list you find: “For a covered entity to inform a spouse, family member, or friend about an individual’s care.”
3. Since the information being requested does not contain BH or SUD information, Caveat #6 would need to be consulted. Caveat #6 states that, since a knee MRI is not a life or death event where one might need to release PHI urgently without permission, an individual’s permission is required.
4. If you have already obtained consent from Mr. Doe stating it is acceptable to release information to his spouse (he has listed her as a personal representative and has signed a form stating what you are allowed to release to her), proceed with your facility’s process in releasing PHI. If you do not have a current consent on file from him stating you may release his PHI to his spouse, you must obtain consent from him before giving his wife the MRI result.

## Glossary of Regulatory Terminology

Regulatory Grid Terminology	Definition
Business Associate (BA)	HIPAA defines a business associate as any organization or person working in association with or providing services to a covered entity who handles or discloses PHI or personal health records (PHR). Examples of business associates include billing companies, accounting or consulting firms that work with covered entities, such as hospitals or doctors, or any number of other organizations that have or could have access to PHI or PHR, like cleaning companies, businesses providing IT support, etc.
Child	An individual less than 14 years of age.
Consent Form	A form signed by the individual to grant permission to share specific health information to a specific entity for a specific period of time. <b>MDHHS 5515 “Consent to Share Behavioral Health Information” is an example of a Consent Form.</b>
Continuity of Care	Coordination of services provided to individuals before they enter a health care setting, during the time they are in the setting, and after they leave the setting. Continuity of care is concerned with quality of care over time. It is the process by which the individual and his/her clinician-led care team are cooperatively involved in ongoing health care management toward the shared goal of high-quality, cost-effective medical care.
Covered Entity (CE)	A HIPAA-covered entity is any organization or corporation that directly handles protected health information (PHI) or personal health records (PHR). The most common examples of covered entities include hospitals, doctors’ offices, and health insurance providers. In this Tool, “covered entity” is used more broadly to indicate providers handling health information covered by the relevant law.
Current	Not expired. Authorization forms should say when they expire. In the absence of an expiration date, authorization is generally thought to be good for one year from the date it was signed by the individual.
De-identified	De-identification is the process used to prevent a person’s identity from being connected with information about them. For example, data produced during human subject research might be de-identified to preserve research participants’ privacy. De-identification is adopted as one of the main approaches of data privacy protection.
Domestic Abuse	Domestic violence (also called intimate partner violence (IPV), domestic abuse or relationship abuse) is a pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship.
Emergency Response	Severe disaster, national or public health emergency.
Emergency Situations	Per the Michigan Mental Health Code, “emergency situation” means a situation in which an individual is experiencing a serious mental illness or a developmental disability, or a minor is experiencing a serious emotional disturbance, and 1 of the following applies: (a) The individual can reasonably be expected within the near future to physically injure himself, herself, or another individual, either intentionally or unintentionally. (b) The individual is unable to provide himself or herself food, clothing, or shelter or to attend to basic physical activities such as eating, toileting, bathing, grooming, dressing, or ambulating, and this inability may lead in the near future to harm to the individual or to another individual. (c) The individual has mental illness that has impaired his or her judgment so that the individual is unable to understand his or her need for treatment, and that impaired judgment, on the basis of competent clinical opinion, presents a substantial risk of significant physical or mental harm to the individual in the near future or presents a substantial risk of significant physical harm to others in the near future.
Family and Friends	Per the Michigan Mental Health Code, “family member” means a parent, stepparent, spouse, sibling, child, or grandparent of a primary consumer, or an individual upon whom a primary consumer is dependent for at least 50% of his or her financial support. A “friend” may refer to a person identified by the primary consumer who is not married to the primary consumer or is otherwise not recognized as a relative of the individual under applicable law.

<p>Federally Assisted</p>	<p>A program is considered to be federally assisted if:</p> <ol style="list-style-type: none"> <li>(1) It is conducted in whole or in part, whether directly or by contract or otherwise, by any department or agency of the United States (Veterans Affairs (VA) and Armed Forces are separate, see below)</li> <li>(2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States, including but not limited to: <ol style="list-style-type: none"> <li>(i) Participating provider in the Medicare program;</li> <li>(ii) Authorization to conduct maintenance treatment or withdrawal management; or</li> <li>(iii) Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of substance use disorders;</li> </ol> </li> <li>(3) It is supported by funds provided by any department or agency of the United States by being: <ol style="list-style-type: none"> <li>(i) A recipient of federal financial assistance in any form, including financial assistance which does not directly pay for the substance use disorder diagnosis, treatment, or referral for treatment; or</li> <li>(ii) Conducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program; or</li> </ol> </li> <li>(4) It is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.</li> </ol> <p><b>Exceptions:</b></p> <ol style="list-style-type: none"> <li>(1) <i>Department of Veterans Affairs.</i> These regulations do not apply to information on substance use disorder individuals maintained in connection with the Department of Veterans Affairs’ provision of hospital care, nursing home care, domiciliary care, and medical services under Title 38, USC Those records are governed by 38 USC 7332 and regulations issued under that authority by the Secretary of Veterans Affairs.</li> <li>(2) <i>Armed Forces.</i> The regulations in this part apply to any information described in paragraph (a) of this section which was obtained by any component of the Armed Forces during a period when the individual was subject to the Uniform Code of Military Justice except: <ol style="list-style-type: none"> <li>(i) Any interchange of that information within the Armed Forces; and</li> <li>(ii) Any interchange of that information between the Armed Forces and those components of the Department of Veterans Affairs furnishing health care to veterans</li> </ol> </li> </ol>
<p>General Medical Facility</p>	<p>The term “general medical care facility” is not defined in the definitions section of Title 42 CFR Part 2 (or Part 2) 2.11. Hospitals, trauma centers, or federally qualified health centers would generally be considered “general medical care” facilities. Primary care providers who work in such facilities would only meet Part 2’s definition of a program if (1) they work in an identified unit within such general medical care facility that holds itself out as providing, and provides, alcohol or drug use disorder diagnosis, treatment or referral for treatment, or (2) the primary function of the provider is alcohol or drug use disorder diagnosis, treatment or referral for treatment, and they are identified as providers of such services. In order for a program in a general medical care facility to share information with other parts or units within the general medical care facility, administrative controls must be in place to protect Part 2 information when it is shared. In addition, a practice comprised of primary care providers could be considered a “general medical facility.” As such, only an identified unit within that general medical care facility which holds itself out as providing and provides alcohol or drug use disorder diagnosis, treatment or referral for treatment would be considered a “program” under the definition in the Part 2 regulations. Medical personnel or staff within that facility whose primary function is the provision of those services and who are identified as such providers would also qualify as a “program” under the definition in the Part 2 regulations. Other units or practitioners within that general medical care facility would not meet the definition of a Part 2 program unless such units or practitioners also hold themselves out as providing and provide alcohol or drug use disorder diagnosis, treatment or referral for treatment.</p>
<p>Grand Jury</p>	<p>A grand jury is a jury – a group of citizens – empowered by law to conduct legal proceedings and investigate potential criminal conduct, and determine whether criminal charges should be brought. A grand jury may subpoena physical evidence or a person to testify. A grand jury is separate from the courts, which do not preside over its functioning.</p>
<p>Health Care Clearing House</p>	<p>A public or private entity, including a billing service, repricing company, or community health information system, that processes non-standard data or transactions received from another entity into standard transactions or data elements, or vice versa.</p>

Health Care Operations	Per the HIPAA Privacy Rule, “health care operations” are certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment. These activities, which are limited to the activities listed in the definition of “health care operations” at 45 CFR 164.501, include: conducting quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, and case management and care coordination; reviewing the competence or qualifications of health care professionals, evaluating provider and health plan performance, training health care and non-health care professionals, accreditation, certification, licensing, or credentialing activities; underwriting and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to health care claims conducting or arranging for medical review, legal, and auditing services, including fraud and abuse detection and compliance programs; business planning and development, such as conducting cost-management and planning analyses related to managing and operating the entity; and business management and general administrative activities, including those related to implementing and complying with the Privacy Rule and other Administrative Simplification Rules, customer service, resolution of internal grievances, sale or transfer of assets, creating de-identified health information or a limited data set, and fundraising for the benefit of the covered entity. General Provisions at 45 CFR 164.506.
Health Care Professional	Clinicians that perform health care services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. Health care providers (e.g., physicians, hospitals, and clinics) are covered entities if they transmit health information in electronic form in connection with a transaction for which a HIPAA standard has been adopted by HHS (e.g., billing).
Health Plan	An individual or group plan that provides, or pays the cost of, medical care. Health plans include private entities (e.g., health insurers and managed care organizations) and government organizations (e.g., Medicaid, Medicare, and the Veterans Health Administration).
“Holds Itself Out”	The phrase “holds itself out” is not defined in the regulations, but could mean a number of things, including but not limited to state licensing procedures, advertising or the posting of notices in the offices, certifications in addiction medicine, listings in registries, internet statements, consultation activities for non-“program” practitioners, information presented to individuals or their families, or any activity that would lead one to reasonably conclude that the provider is providing or provides alcohol or drug abuse diagnosis, treatment or referral for treatment.
Imminent Threat	Health care clinicians may share individual information with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public – consistent with applicable law (such as state statutes, regulations, or case law) and the clinician’s standards of ethical conduct. A health or behavioral health professional may contact anyone who is reasonably able to lessen the risk of harm when they believe that a individual presents a serious and imminent threat to the health or safety of a person (including the individual) or the public. HIPAA helps professionals by ensuring that behavioral health information can be shared to prevent harm when the clinician believes that it is necessary and the information is shared with someone who can help lessen the potential harm. For example, if an individual tells their psychotherapist that they have persistent images of harming their spouse, the psychotherapist may: notify the spouse; call the individual’s psychiatrist or primary care doctor to review medications and develop a plan for voluntary or involuntary hospitalization or other treatment; call 911, if emergency intervention is required; and /or notify law enforcement, if needed.
In loco parentis	An individual who is not the parent or guardian of a child or minor, but who has legal custody and is providing care.
Law Enforcement Purposes	The Privacy Rule permits covered entities to disclose protected health information (PHI) to law enforcement officials, without the individual’s written authorization, under specific circumstances. PHI may be released by covered entities if asked to do so by a law enforcement official: in response to a court order, court-issued subpoena, court-issued warrant, summons or similar process; to identify or locate a suspect, fugitive, material witness, or missing person; about the victim of a crime if, under certain limited circumstances the covered entity is unable to obtain the person’s authorization; about criminal conduct at a facility or facilities within a covered entity’s network of providers; and in emergency circumstances to report a crime; the location of the crime or victims; or the identity, description or location of the person who committed the crime; to authorized federal or government law enforcement officials so they may provide protection to the President of the United States, other authorized or elected persons or foreign heads of state or to conduct special investigations; if the subject of the PHI is an inmate of a correctional institution or under the custody of a law enforcement official the covered entity may disclose PHI about the subject of the protected health information to the correctional institution or law enforcement official—this disclosure would be necessary: (1) for the institution to provide the inmate with health care (2) to protect the inmate’s health and safety or the health and safety of others or (3) for the safety and security of the correctional institution; covered entities may release protected health information to authorized federal officials for intelligence, counterintelligence, and other national security activities as required by law.
Legal Guardian	A person who has legal authority and the corresponding duty to care for the personal and property interests of another person, also called a ward.

Marketing	Per the Privacy Rule, “marketing” means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service. The Privacy Rule’s limitations on the use or disclosure of PHI for marketing purposes do not exist in most states today. For example, the Rule requires individuals’ authorization for the following types of uses or disclosures of protected health information for marketing: (1) Selling protected health information to third parties for their use and re-use. Thus, under the Rule, a hospital or other provider may not sell names of pregnant women to baby formula manufacturers or magazines without an authorization. (2) Disclosing protected health information to outsiders for the outsiders’ independent marketing use. Under the Rule, doctors may not provide patient lists to pharmaceutical companies for those companies’ drug promotions without an authorization. Moreover, under the “business associate” provisions of the Privacy Rule, a covered entity may not give protected health information to a telemarketer, door-to-door salesperson, or other third party it has hired to make permitted communications (for example, about a covered entity’s own goods and services) unless that third party has agreed by contract to use the information only for communicating on behalf of the covered entity. Without the Privacy Rule, there may be no restrictions on how third parties re-use information they obtain from health plans and providers.
Minimum Necessary Standard	The Privacy Rule generally requires covered entities to take reasonable steps to limit uses, disclosures, or requests (if the request is to another covered entity) of protected health information (PHI) to the extent necessary to accomplish the intended purpose.
Minor	An individual who is 14 years of age or older and is also younger than age 18.
Network to End Domestic Violence (NNEDV)	NNEDV is the leading voice for domestic violence victims and their advocates. As a membership and advocacy organization of state domestic violence coalitions, allied organizations and supportive individuals, NNEDV works closely with its members to understand the ongoing and emerging needs of domestic violence victims and advocacy programs. NNEDV works to ensure those needs are heard and understood by policymakers at the national level.
Office of Inspector General (OIG)	Health and Human Services (HHS) OIG is the largest inspector general’s office in the federal government, with approximately 1,600 staff dedicated to combating fraud, waste, and abuse and to improving the efficiency of HHS programs. A majority of OIG’s resources go toward the oversight of Medicare and Medicaid — programs that represent a significant part of the federal budget and that affect this country’s most vulnerable citizens. OIG government oversight extends to programs under other HHS institutions, including the Centers for Disease Control and Prevention, National Institutes of Health, and Food and Drug Administration.
Overdose (OD)	Overdose (OD) happens when a toxic amount of a drug, or combination of drugs overwhelms the body. People can overdose on many things, including alcohol, Tylenol, opioids, or a mixture of drugs.
Parental Access to Children’s Mental Health Information	Per the Privacy Rule, if the parent is the child’s “personal representative,” meaning the parent has the legal authority to make health care decisions on behalf of the child, then covered entity must share the protected health information accordingly. However, if the covered entity has concerns about parental abuse, neglect, or endangerment of the child, then the covered entity can decide whether or not to treat the parent as a personal representative and whether or not to provide parental access to treatment information.
Part 2 Program (also see the definitions for “Title 42 Code of Federal Regulations (CFR) Part 2”)	<p>Not every primary care provider who prescribes controlled substances meets the definition of a “program” or part of a “program” under Part 2. For providers to be considered “programs” covered by the Part 2 regulations, they must be both “federally-assisted” and meet the definition of a program under 42 CFR § 2.11. Physicians who prescribe controlled substances to treat SUDs are DEA-licensed and thus meet the test for federal assistance [42 CFR § 2.12(b)(2)]. Nevertheless, the regulations establish additional criteria to meet the definition of a “program”:</p> <ol style="list-style-type: none"> <li>1. If a provider is not a general medical care facility, then the provider meets Part 2’s definition of a “program” if it is an individual or entity that holds itself out as providing, and provides, alcohol or drug use disorder diagnosis, treatment or referral for treatment.</li> <li>2. If the provider is an identified unit within a general medical care facility, it is a “program” if it holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment.</li> <li>3. If the provider consists of medical personnel or other staff in a general medical care facility, it is a program if its primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and is identified as such specialized medical personnel or other staff within the general medical care facility.</li> </ol> <p>In addition, in explaining Part 2’s applicability and coverage, § 2.12(e)(1) states that “coverage includes, but is not limited to, employee assistance programs, programs within general hospitals, school-based programs and private practitioners who hold themselves out as providing, and provide, alcohol or drug use disorder diagnosis, treatment or referral for treatment” [42 CFR § 2.12(e)(1)].</p> <p>Accordingly, primary care providers who do not work in general medical care facilities meet Part 2’s definition of a program if their principal practice consists of providing alcohol or drug use disorder diagnosis, treatment or referral for treatment, and they hold themselves out as providing the same. If their principal practice consists of providing alcohol or drug use disorder diagnosis, treatment or referral for treatment, but they do not hold themselves out as providing those services, then it is likely that they would not meet the definition of a “program.”</p>

Payment	Per the Privacy Rule, “payment” encompasses the various activities of health care providers to obtain payment or be reimbursed for their services, and of a health plan to obtain premiums to fulfill their coverage responsibilities and provide benefits under the plan, and to obtain or provide reimbursement for the provision of health care. In addition to the general definition, the Privacy Rule provides examples of common payment activities, which include, but are not limited to: Determining eligibility or coverage under a plan and adjudicating claims; risk adjustments; billing and collection activities; reviewing health care services for medical necessity, coverage, justification of charges, and the like; utilization review activities; and disclosures to consumer reporting agencies (limited to specified identifying information about the individual, his or her payment history, and identifying information about the covered entity).
Personal Representative	Per the Privacy Rule, a person authorized (under state or other applicable law, e.g., tribal or military law) to act on behalf of the individual in making health care related decisions is the individual’s “personal representative.”
Protected Health Information (PHI)	Protected Health information (PHI) means any information, including genetic information, whether oral or recorded in any form or medium, that: (1) Is created or received by a health care clinician, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) Relates to the past, present, or future physical or behavioral health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. The HIPAA Privacy Rule provides federal protections for personal health information held by covered entities and gives individuals an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of personal health information needed for individual care and other important purposes.
Psychotherapy Notes	Per the Privacy Rule, “psychotherapy notes” means notes recorded (in any medium) by a health care clinician who is a behavioral health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record. Psychotherapy notes exclude medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.
Public Health	The Privacy Rule permits covered entities to disclose protected health information, without authorization, to public health authorities who are legally authorized to receive such reports for the purpose of preventing or controlling disease, injury, or disability. This would include, for example, the reporting of a disease or injury; reporting vital events, such as births or deaths; and conducting public health surveillance, investigations, or interventions.
Public Health Authority	A “public health authority” is an agency or authority of the U.S. government, a state, a territory, a political subdivision of a state or territory, or Indian tribe that is responsible for public health matters as part of its official mandate, as well as a person or entity acting under a grant of authority from, or under a contract with, a public health agency. Examples of a public health authority include state and local health departments, the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), and the Occupational Safety and Health Administration (OSHA).
Research	Research is defined in the Privacy Rule as, “a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.” See 45 CFR 164.501. A covered entity may always use or disclose for research purposes health information which has been de-identified (in accordance with 45 CFR 164.502(d), and 164.514(a)-(c) of the Rule) without regard to the provisions below. Individuals will be informed of uses and disclosures of their medical information for research purposes, and their rights to access information about them held by covered entities. Where research is concerned, the Privacy Rule protects the privacy of individually identifiable health information, while at the same time ensuring that researchers continue to have access to medical information necessary to conduct vital research. Currently, most research involving human subjects operates under the Common Rule (45 CFR Part 46, Subpart A) and/or the Food and Drug Administration’s (FDA) human subject protection regulations (21 CFR Parts 50 and 56), which have some provisions that are similar to, but separate from, the Privacy Rule’s provisions for research. These human subject protection regulations, which apply to most federally-funded and to some privately funded research, include protections to help ensure the privacy of subjects and the confidentiality of information. The Privacy Rule builds upon these existing federal protections. More importantly, the Privacy Rule creates equal standards of privacy protection for research governed by the existing federal human subject regulations and research that is not. In the course of conducting research, researchers may in certain, limited circumstances obtain, create, use, and/or disclose individually identifiable health information. Under the Privacy Rule, covered entities are permitted to use and disclose protected health information for research with individual authorization, or without individual authorization under limited circumstances set forth in the Privacy Rule.
Research Use/ Disclosure Without Authorization	To use or disclose protected health information without authorization by the research participant, a covered entity must obtain one of the following: documented Institutional Review Board (IRB) or Privacy Board Approval.

Sexual Assault	Sexual assault takes many forms, including attacks such as rape or attempted rape, as well as any unwanted sexual contact or threats. Usually a sexual assault occurs when someone touches any part of another person's body in a sexual way, even through clothes, without that person's consent.
Sexually Transmitted Infection (STI)	A sexually transmitted infection (STI) is an infection one can get by having sex. Some STIs (such as gonorrhea and chlamydia) infect sexual and reproductive organs. Others (such as HIV, hepatitis B, and syphilis) cause general body infections. STIs were previously called VD's, or venereal diseases.
Stalking	Stalking is unwanted or repeated surveillance by an individual or group towards another person. Stalking behaviors are interrelated with harassment and intimidation and may include following the victim in person or monitoring them. The term stalking is used with some differing definitions in psychiatry and psychology, as well as in some legal jurisdictions as a term for a criminal offense. According to a 2002 report by the U.S. National Center for Victims of Crime, "virtually any unwanted contact between two people that directly or indirectly communicates a threat or places the victim in fear can be considered stalking," although in practice the legal standard is usually somewhat stricter.
Subpoena	A subpoena or witness summons is a writ issued by a government agency, most often a court, to compel testimony by a witness, or production of evidence under a penalty for failure. There are two common types of subpoena: (1) Subpoena ad testificandum orders a person to testify before the ordering authority or face punishment. The subpoena can also request the testimony to be given by phone or in person; (2) Subpoena duces tecum orders a person or organization to bring physical evidence before the ordering authority or face punishment. This is often used for requests to mail copies of documents to requesting party or directly to court.
Substance Use Disorder (SUD)	Substance use disorder (SUD) occurs when a person's use of alcohol or another substance (drug) leads to health issues or problems at work, school, or home.
Title 42 Code of Federal Regulations (CFR) Part 2 - "Part 2"; How It Applies	Part 2 applies to any individual or entity (other than a general medical facility) that is federally assisted and provides diagnosis, treatment, or referral for treatment of substance use disorders. Part 2 programs include specialized substance use disorder treatment units (and staff) within general medical facilities. An individual or entity is federally assisted if it is authorized, licensed, certified, registered by the federal government, or receives any federal funds. Part 2 covers individual records in paper or electronic form disclosed by a Part 2 program that identify the individual—directly or indirectly—as having or having had a substance use disorder, or as being a participant in a Part 2 program. NOTE: Part 2 does not apply to records on substance use disorder individuals maintained by the Department of Veterans Affairs. The privacy of those veterans' records are governed by 38 USC § 7332.
Title 42 CFR Part 2 Re-Disclosure Notice Language	Re-disclosure means sharing records from another facility not created by you. You are not allowed to send records that you received from somewhere else that identify a individual as having a substance use disorder (SUD). This is because SUD information is protected under 42 CFR Part 2. 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. Language that you should use for this re-disclosure notice is: "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 an individual 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 individual with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65."
Title 42 CFR Part 2 Statutory Exceptions	Part 2 programs may disclose patient identifying information (1) to medical personnel in a bona fide medical emergency; (2) to qualified researchers, provided the research is subject to the Privacy Rule and/or the Common Rule; (3) to qualified organizations and persons who are conducting a program audit or evaluation, provided certain safeguards are met; and (4) in response to a subpoena, provided a court has issued an order authorizing disclosure that complies with the requirements of Title 42 CFR Part 2. NOTE: The Part 2 restrictions on disclosure do not apply (1) to communications among personnel within a Part 2 program—regarding individual diagnosis, treatment, or referral for treatment—or between a Part 2 program and an entity that has direct administrative control over the program; (2) to communications between a Part 2 program and a qualified service organization (QSO) that provides services to the program; (3) to communications between a Part 2 program and law enforcement personnel regarding crimes on program premises or against program personnel; and (4) to reporting incidents of suspected child abuse and neglect pursuant to state law. If you will be sharing any SUD information that is covered under Title 42 CFR Part 2, you should include a re-disclosure notice with any records that you share with the requesting organization.
Title X Agency	Title X of the Public Health Service Act funds agencies to provide services to promote the reproductive and general health care of the family planning client population, see 42 USC § 300 et seq.; 42 CFR Part 59. For Title X Agencies, parental access to a minor's information is not permitted without the minor's documented consent, except as may be necessary to provide services to the individual or as required by law, with appropriate safeguards for confidentiality, see 42 CFR 59.11. Examples of Title X Agencies are Health Departments and Planned Parenthood.

Title XIX Agency	Title XIX of the Social Security Act. These agencies participate in the Medicaid Program and accept Medicaid insurance.
Treating Clinician	The health care professional who is actively providing clinical treatment to the individual in question.
Treatment	Per the Privacy Rule, "treatment" generally means the provision, coordination, or management of health care and related services among health care clinicians or by a health care clinician with a third party, consultation between health care clinicians regarding an individual, or the referral of an individual from one health care clinician to another.
Warrant	A warrant is generally an order that serves as a specific type of authorization, that is, a writ issued by a competent officer, usually a judge or magistrate, which permits an otherwise illegal act that would violate individual rights and affords the person executing the writ protection from damages if the act is performed. A warrant is usually issued by a court and is directed to a sheriff, a constable, or a police officer. Warrants normally issued by a court include search warrants, arrest warrants, and execution warrants.

# The Most Common State and Federal Laws that Govern Exchange of PHI

There are multiple state and federal laws that address what PHI can be shared, when it can be shared, and with whom. When determining whether the state law or the federal law should be followed, the law that gives the most protection to the individual who is the subject of the PHI is the law that applies. **This information is current through August 2019.**

- If there is no mention in state law, then federal law is followed.
- If federal law provides more protection than state law, then federal law is followed.
- If state law provides more protection than federal law, then state law is followed.

We reference the following **Michigan** laws in this PHI Consent Tool:

- **Michigan Penal Code Act 328 of 1931**
- **Social Welfare Act 280 of 1939**
- **Revised Judicature Act 236 of 1961**
- **Mental Health Code Act 258 of 1974**
- **Child Protection Law Act 238 of 1975**
- **Public Health Code Act 368 of 1978**
- **The Parental Rights Restoration Act, Act 211 of 1990**
- **Medical Records Access Act 47 of 2004**

We reference the following **federal** laws and regulations in this PHI Consent Tool:

- **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**
- **Title 42 Code of Federal Regulations (CFR) Part 2 - Confidentiality of Substance Use Disorder Patient Records**
- **\*Family Violence Prevention and Services Act (FVPSA)**
- **\*Victims of Crime Act (VOCA)**
- **\*Violence Against Women Act (VAWA)**
- **Title 42 Code of Federal Regulations (CFR) Part 59 - Grants for Family Planning Services**

*\*Because there are special requirements for those clinicians/facilities receiving federal funding under the domestic violence laws (e.g., VAWA, VOCA, and/or FVPSA), these pieces of legislation are referenced separately in this PHI Consent Tool.*

Here are additional **federal** laws which are applicable to the sharing of PHI and/or Behavioral Health Information:

- **Health Information Technology for Economic and Clinical Health Act (HITECH Act)**
- **21st Century Cures Act - Public Law 114–255**
- Trusted Exchange Framework and Common Agreement (TEFCA)
  - **Draft 2 of TEFCA released April 19, 2019**
  - **A User’s Guide to Understanding Draft 2 of TEFCA**
- **VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 (VA MISSION Act 2018)**
- **Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT for Patients and Communities Act)**
- **The Coronavirus Aid, Relief, and Economic Security Act (CARES Act)**

## Caveats

In the Legislation Grids, yellow triangles mean the law allows for sharing of PHI if it is in the best interest of the individual and what may be shared will be based on the minimum necessary standard as well as what the law calls for. Purple diamonds mean the sharing of PHI depends on whether the information requested deals with SUD treatment. Following are the special circumstances that can affect the sharing of PHI in these cases.

In each Caveat, the **orange** highlighted legislation(s) appears to be the most protective and, therefore, should be followed.

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### **Caveat #1: An individual asks a covered entity for some or all of their own behavioral health record or integrated care record.**

#### **Michigan Mental Health Code Act 258 of 1974**

See §§330.1748(4), 330.1748 (4)(6)(b)]

Mandates disclosure of the mental health record to the adult individual.

#### **Michigan Medical Records Act 47 of 2004**

See §333.26265 Sec. 5, subsections (1),(2)(e),(2)(f)

#### **HIPAA**

See Title 45 CFR §164.524

**Michigan Mental Health Code Act 258 of 1974:** The following must be determined before an individual can receive PHI under the Michigan Mental Health Code:

- Does the individual have a guardian, and if so, has the guardian given permission?
- Has the individual been deemed legally incompetent?

If the adult individual does not have a guardian and has not been adjudicated legally incompetent, §330.1748(4) of the Michigan Mental Health Code **mandates disclosure of the mental health record** to the adult individual, upon the individual's request. The holder of the record shall comply with the adult individual'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. If the individual is a minor or has a guardian appointed, then the Michigan Mental Health Code permits withholding all or part of the mental health record if such disclosure is detrimental to the individual or others. See §330.1748(6)(b) of the Michigan Mental Health Code.

**Michigan Medical Records Access Act 47 of 2004:** A "health care provider" under the Michigan Medical Records Access Act means a person who is licensed or registered or otherwise authorized under Article 15 of the Michigan Public Health Code §§333.16101 to 333.18838. "Health care provider" does not include **psychiatrists, psychologists, social workers, or professional counselors who provide only mental health services**. See §333.26263(e) of the Michigan Medical Records Access Act.

Therefore, it appears that when the health care provided is "any care, service, or procedure provided by a health care provider or health facility to diagnose, treat, or maintain a patient's physical condition, or that affects the structure or a function of the human body." See §333.26263(d), then the following determination can be made: "the health care provider or health facility determines that disclosure of the requested medical record is likely to have an adverse effect on the patient, the health care provider or health facility shall provide a clear statement supporting that determination and provide the medical record to another health care provider, health facility, or legal counsel designated by the patient or his or her authorized representative." See §333.26265(2)(e) of the Michigan Medical Records Access Act. If the health care provider or health facility receives a request for a medical record that was obtained from someone other than a health care provider or health facility under a confidentiality agreement, the health care provider or

health facility may deny access to that medical record if access to that medical record would be reasonably likely to reveal the source of the information. If the health care provider or health facility denies access under this subdivision, it shall provide the patient or his or her authorized representative with a written denial (Michigan Medical Records Access Act §333.26265(2)(f)).

Providers should have a mechanism in place for determining whether a denial of access is appropriate under §§333.26265(2)(e), (2)(f) of the Michigan Medical Records Act.

§333.26265(1) of the Michigan Medical Records Access Act provides that competent adult individuals have the right to access their own **medical records**. Also, minors who have the right to consent to treatment without a parent are also considered to be a “patient” per the Michigan Medical Records Access Act and have the right to access their own **medical record**. Additionally, an “authorized representative” has the right to access the individual’s **medical record**. See 333.26263(a) of the Michigan Medical Records Access Act. However, as outlined in the previous paragraph, there are times when a health care provider or health facility can determine when the requested medical record is likely to have an adverse effect on the individual (Michigan Medical Records Access Act §333.26265(2)(e)).

**HIPAA:** “More stringent” is expressly defined by HIPAA to include a state law that offers “greater privacy protections for the individual who is the subject of the individually identifiable health information.” Thus, HIPAA preemption must be determined on a case-by-case basis after considering whether it is possible to comply with both HIPAA and state law and if not, whether state law provides **greater privacy protection** or a **greater right of access** or **amendment to individuals** (HIPAA §160.202).

**When PHI is provided to an individual, follow your facility’s process in documenting that the individual was given a copy of their record.**

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**Caveat #2: The individual asks a covered entity for some or all of their own physical health record.  
For a covered entity to inform an individual or individual’s personal representative about their care.**

#### **Michigan Public Health Code Act 368 of 1978**

See §§333.20201(2)(b), 333.20170

It appears that while clinician discretion applies, individuals are entitled to their own records.

#### **Michigan Medical Records Access Act 47 of 2004**

See §§333.26265 Sec. 5, subsections (1), (2)(e), (2)(f)

It appears that while clinician discretion applies, individuals are entitled to their own records.

#### **HIPAA**

See Title 45 CFR §164.524

It appears that while clinician discretion applies, individuals are entitled to their own records.

**Michigan Medical Records Access Act 47 of 2004:** §333.26265(1) of the Michigan Medical Records Access Act provides that **competent adult individuals have the right to access their own medical records**. Also, minors who have the right to consent to treatment without a parent are also considered to be a “patient” per the Michigan Medical Records Access Act and have the right to access their own **medical records**. Additionally, an “authorized representative” has the right to access the individual’s **medical record** (Michigan Medical Records Access Act 333.26263(a)). However, there are times when a health care provider or health facility can determine when the requested medical record is likely to have an adverse effect on the individual (Michigan Medical Records Access Act §333.26265(2)(e)).

When health care provided is “any care, service, or procedure provided by a health care provider or health facility to diagnose, treat, or maintain a patient’s physical condition, or that affects the structure or a function of the human body.” See §333.26263(d), then the following determination can be made: “the health care provider or health facility determines that disclosure of the requested medical record is likely to have an adverse effect on the patient, the health care provider or health facility shall provide a clear statement supporting that determination and provide the

medical record to another health care provider, health facility, or legal counsel designated by the patient or his or her authorized representative.” See §333.26265(2)(e) of the Michigan Medical Records Access Act. Rev#3 11-2019 26.

If the health care provider or health facility receives a request for a medical record that was obtained from someone other than a health care provider or health facility under a confidentiality agreement, the health care provider or health facility may deny access to that medical record if access to that medical record would be reasonably likely to reveal the source of the information. If the health care provider or health facility denies access under this subdivision, it shall provide the patient or his or her authorized representative with a written denial (Michigan Medical Records Access Act §333.26265(2)(f)).

Providers should have a mechanism in place for determining whether a denial of access is appropriate under §§333.26265(2)(e), (2)(f) of the Michigan Medical Records Access Act.

There are similar requirements under HIPAA (Title 45 CFR §164.524).

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**Caveat #3: For a covered entity to share PHI to enable an individual’s care team to provide continuity of care for medical and/or behavioral health issues (including SUD treatment).**

**Michigan Mental Health Code Act 258 of 1974**

See §§330.1261, 330.1262(1)(c), 330.1263(a)

It appears that consent is required unless it is a bona fide medical emergency and/or 2A is not applicable.

**Title 42 CFR Part 2**

See §§2.31-2.35, 2.51

It appears that consent is required unless it is a bona fide medical emergency.

**Michigan Mental Health Code Act 258 of 1974, §§330.1261, 330.1262(1)(c), 330.1263(a).** Records of the identity, diagnosis, prognosis, and treatment of an individual maintained in connection with the performance of a program, an approved service program, or an emergency medical service authorized or provided or assisted under this chapter, are confidential and may be disclosed only for the purposes and under the circumstances authorized by §§262 or 263.

Section 262 states that individuals may give consent for their records to be shared but if they do not give consent, §263 states consent is required unless it is a bona fide medical emergency.

With regard to §261, entities may determine for themselves whether or not Chapter 2A applies to their work. If it is determined that Chapter 2A is not applicable, then §§262 and 263 are not applicable.

**Title 42 CFR Part 2, §§2.31-2.35, 2.51.** The Title 42 CFR Part 2 regulations (Part 2) serve to protect patient records created by federally assisted programs for the treatment of substance use disorders (SUD). Part 2 has been revised to further facilitate better coordination of care in response to the opioid epidemic while maintaining its confidentiality protections against unauthorized disclosure and use.

Part 2 also continues to restrict the disclosure of SUD treatment records without patient consent, other than as statutorily authorized in the context of a bona fide medical emergency; or for the purpose of scientific research, audit, or program evaluation; or based on an appropriate court order.

Entities may determine for themselves whether or not Part 2 applies to their work. If it is determined that it does not apply, and 2A of the Michigan Mental Health Code also does not apply, then patient consent would not be needed to share for continuity of care.

Please note that treatment records created by non-Part 2 providers based on their own patient encounter(s) are explicitly not covered by Part 2, unless any SUD records previously received from a Part 2 program are incorporated into such records. Segmentation (or holding a part of any Part 2 patient record previously received) can be used to ensure that new records created by non-Part 2 providers will not become subject to Part 2.

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**Caveat #4: For a covered entity to inform an individual’s personal representative about their general medical or behavioral health care.**

**Michigan Mental Health Code Act 258 of 1974**

See §330.1748(6)(b)

It appears that clinician discretion applies.

**Michigan Public Health Code Act 368 of 1978**

See §§333.20201(2)(c), 333.20170

It appears that clinician discretion applies.

**Michigan Medical Records Access Act 47 of 2004**

See §§333.26265 Sec. 5, subsections (1), (2)(e)

It appears that clinician discretion applies.

**HIPAA**

See Title 45 CFR §§164.524, 164.510

It appears that clinician discretion applies.

Individual representative is generally another term used for legal representative, and the legal representative of the individual may obtain information about their care as long as the disclosure would not be detrimental to the recipient, individual, or others. Legal representatives are either assigned by the individual themselves or by the court.

**If providing the PHI requested will not harm the individual, it should be provided to the individual’s authorized personal representative following the facility’s process for documenting that the individual’s representative was given a copy of their record.**

Covered entities may disclose PHI to an authorized personal representative with an individual’s permission. What may be disclosed to the individual representative depends on what the individual says or puts in writing. Under normal circumstances, PHI may only be disclosed if the individual has given permission and/or the PHI will not put the individual, the individual representative, or another individual in danger. Under emergent circumstances, a health care professional may release PHI even if the individual is unable to give permission if it is in the individual’s best interest as determined by the covered health care provider, in the exercise of professional judgment.

Also, the health care clinician/facility does not have to release medical records that were obtained from another source under a confidentiality agreement if access to this portion of the medical record would be reasonably likely to reveal the source of the information (for instance in the case of reported abuse). If access to this information is denied, the clinician/facility would need to provide the individual or the individual authorized personal representative with a written denial.

There are similar requirements under HIPAA (Title 45 CFR §164.524).

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**Caveat #5: For a covered entity to inform an individual’s personal representative about their SUD care.**

**Michigan Mental Health Code Act 258 of 1974**

See §330.1262(1)(c)

It appears that disclosures are permitted with written consent.

**Title 42 CFR Part 2**

See §2.33(a)

It appears that disclosures are permitted with written consent.

A personal representative is someone by definition that an individual gives written consent for them to receive PHI.

The Michigan Mental Health Code §330.1262(1)(c) states that an individual can authorize other people to receive SUD treatment information.

Covered entities may disclose PHI to an authorized personal representative with an individual's permission. What may be disclosed to the individual representative depends on what the individual says or puts in writing. Under normal circumstances, PHI may only be disclosed if the individual has given permission and/or the PHI will not put the individual, the individual representative, or another individual in danger. In order for an individual's personal representative to receive PHI about SUD treatment, the authorization must specify what exactly is acceptable to the individual to have released to their representative and for what period of time.

If the requested PHI **does not** contain any mention of SUD, follow HIPAA:

Under HIPAA, covered entities may disclose PHI to an authorized personal representative with an individual's permission. What may be disclosed to the individual representative depends on what the individual says or puts in writing. Under normal circumstances, PHI may only be disclosed if the individual has given permission and/or the PHI will not put the individual, the individual representative, or another individual in danger. Under emergent circumstances, a health care professional may release PHI even if the individual is unable to give permission if it is in the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment.

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**Caveat #6: For a covered entity to inform a spouse, family member, or friend about an individual's general medical care.**

**Michigan Public Health Code Act 368 of 1978**

See §§333.20201(2)(c), 333.20170

It appears that clinician discretion applies.

**HIPAA**

See Title 45 CFR §164.510

It appears that clinician discretion applies.

An individual must give permission for a covered entity to disclose PHI to a spouse, family member, or friend under normal circumstances. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the PHI that is directly relevant to the spouse, family member, or friend's involvement with the individual's care or payment related to the individual's health care or needed for notification purposes.

The covered entity should provide the individual a real opportunity to agree or object to the disclosure (Title 45 CFR §164.510(b)). However, a clinician may infer from the circumstances that the individual does not object based upon the exercise of professional judgment or that it is in the individual's best interests (Title 45 CFR §§164.510(b)(2) and 164.510(3)).

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**Caveat #7: For the covered entity (that possesses SUD treatment records) to perform facility operations (certain administrative, financial, legal, and quality improvement activities that are necessary to run the business).**

**Michigan Mental Health Code Act 258 of 1974**

See §§330.1262(1)(b), 330.1263(b)

It appears that information must be de-identified, otherwise individual consent is necessary.

**Title 42 CFR Part 2**

See §2.53

It appears that there is a broader range of acceptable facility operations where consent is not required.

Audit and Evaluation. **Title 42 CFR Part 2 §2.53** now includes procedures for federal, state, or local government agencies providing financial assistance to the Part 2 program to have access to the records, without an individual's consent, in order to audit and evaluate activities, such as financial and quality assurance functions critical to Accountable Care Organizations (ACOs) and other health care organizations.

Entities are allowed to have audits and evaluations completed without individual consent as long as records are not copied, downloaded, forwarded electronically, or removed from the premises. Auditors must agree in writing to comply with the limitations on re-disclosure. The auditors are not allowed to disclose or use individual identifying information obtained during the audit or evaluation for any purposes other than those necessary to complete the audit or evaluation.

The entity must ensure that any audit or evaluation involving individual identifying information occurs in a confidential and controlled setting approved by the designated executive.

Part 2 facilities may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits, investigations, inspections, licensure or disciplinary actions, administrative and/or legal proceedings.

**The Michigan Mental Health Code states that using information for these types of activities can be done if it has been de-identified, otherwise individual consent is necessary.**

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**Caveat #8: For a covered entity (that possesses SUD treatment records) to report STIs, communicable diseases, adverse drug reactions, and/or medical device failure for public health.**

#### **Michigan Mental Health Code Act 258 of 1974**

While there is no specific mention of these scenarios in the Mental Health Code (this falls under Michigan Public Health Code), the idea is to protect the individual while adhering to the mandatory State reporting laws. The easiest way to report these things are with the individual's consent.

#### **Michigan Public Health Code Act 368 of 1978**

See §§333.5111(1)-§333.5111(2)(b), 325.173, 333.9207

#### **Title 42 CFR Part 2**

See §2.22(5)(c), 2.51

#### **HIPAA**

See Title 45 CFR §§164.512(b),164.512(b)(1)(iv)

In an effort to prevent, treat, and control the spread of communicable diseases, all states require health care providers and sometimes others to report cases of communicable disease to local public health authorities. These reports enable public health officials to locate, examine, counsel, treat, and monitor anyone presenting with a communicable disease. These mandated reporting requirements may appear to conflict with the federal confidentiality regulations for drug and alcohol records, which restrict patient-identifying disclosures about individuals in alcohol or drug treatment. Yet, the Federal confidentiality regulations contain exceptions that allow SUD programs to discharge their state-mandated responsibilities with respect to the reporting of communicable diseases. In fact, the exceptions to the regulations not only permit programs to make the necessary communicable disease reports but also make it possible for them to cooperate on an ongoing basis with public health officials (and other health care providers) in efforts to treat and monitor those SUD patients who present with communicable disease.

HIPAA does address this question and states that reporting of communicable diseases to the local or State health department or immunizations to the Michigan Childhood Immunization Registry are exempt because they are mandated within the Michigan Public Health Code and are used for surveillance and prevention of communicable diseases.

Part 2 programs can only use or disclose PHI for public health activities, including the reporting of disease, injury, vital events and the conduct of public health surveillance, investigation and/or intervention, if the individual who is the subject of the PHI consents to this type of disclosure or if the program reports without making client identifying disclosures, or if the program uses a Qualified Services Organization Agreement (QSOA).

Individual identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying individuals or their physicians of potential dangers. The amount and type of information disclosed would need to be minimized to protect the individual. Follow your facility's process for reporting issues to the FDA.

How to safely comply with state mandatory reporting laws while protecting the individual:

**Obtaining consent.** The easiest way to comply with a state law that mandates reporting of client-identifying information to a public health authority is to obtain the client's consent. The information reported by the program may not be redisclosed by the public health authority unless the consent form is drafted to permit redisclosure.

**Reporting without making a client-identifying disclosure.** If the program is part of another health care facility (for example, a general hospital or mental health program), it can include the client's name in reports if it does so under the name of the parent agency, as long as no information is released that would link the client with SUD treatment.

**Using a Qualified Service Organization Agreement (QSOA).** A treatment program that is required to report clients' names to a public health department also may enter into a QSOA with a general medical care facility or a laboratory that conducts testing or other services for the program. The QSOA permits the program to report the names of clients to the medical care facility or laboratory, which may then report the information, including client names, to the public health department. However, no information is provided that would link those names with SUD treatment.

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**Caveat #9: Sharing PHI with a covered entity regarding individuals who have experienced elder abuse, domestic violence, sexual assault, stalking, or other crimes.**

#### **Michigan Public Health Code Act 368 of 1978**

See §333.20201(2)(c)

It appears that consent is not needed for care coordination but caution should be exercised.

#### **Social Welfare Act 280 of 1939**

See §§400.11, 400.11a, 400.11e

#### **HIPAA**

See Title 45 CFR §164.506(a)

It appears that clinician discretion applies.

#### **Elder Abuse**

"Vulnerable adult abuse" is a crime, and someone can go to jail if they commit vulnerable adult abuse. In this criminal law context, there are very specific definitions of vulnerable adult abuse. Reporters of elder abuse do not need the consent of the possible victim in order to report, but one would report details of abuse and not that either victim or proposed abuser is in treatment for SUD. Elder abuse falls under the mandatory reporting umbrella. Follow your facility's policies and process for reporting elder abuse.

#### **VOCA, VAWA, FVPSA**

**NOTE: If you are a clinician receiving funding under VOCA, VAWA, and/or FVPSA, then individual authorization is necessary and a specialized form designed to address heightened safety and privacy concerns should be used (see page 16) for "Special Requirements Pertaining to Family Violence, Victims of Crime, and Violence Against Women Legislation." Even if the facility is not receiving funding through these programs, care should be taken not to jeopardize the individual's safety.**

Generally, individuals do not need to authorize the release of PHI for care coordination under either the Michigan Public Health Code or HIPAA, but caution should be exercised for those who have been victims of domestic violence, sexual assault, stalking or other crimes. Even if the facility or clinician does not receive funding under VOCA, VAWA, and/or FVPSA grants, the individual should be consulted, if at all possible, before releasing information in order to protect them. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the PHI that is directly relevant to the individual's involvement with the individual's care or payment related to the individual's health care or needed for notification purposes.

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**Caveat #10: For a covered entity (that possesses SUD treatment records) in reporting elder abuse, domestic violence, sexual assault, stalking, or other violent crime committed against an individual to law enforcement based on Michigan Mandatory Reporting laws.**

**Michigan Mental Health Code Act 258 of 1974**

While there is no specific mention of these scenarios in this legislation, the idea is to protect the individual while adhering to the mandatory State reporting laws.

**Child Protection Law Act 238 of 1975**

See §§722.623, 722.623(a)

**Social Welfare Act 280 of 1939**

See §§400.11, 400.11a, 400.11e

**Michigan Public Health Code Act 368 of 1978**

See §333.7401(c)

**Revised Judicature Act 236 of 1961**

See §600.2157a

**Michigan Penal Code Act 328 of 1931**

See §750.411

**Title 42 CFR Part 2**

See §§2.12(c)(5), 2.12(c)(6), 2.63(a)(1)

*Agencies providing SUD treatment should develop a protocol to handle legal requirements.*

Everyone in the agency who is required by law to report suspected abuse or neglect must clearly understand when and how a report must be made and what information must be reported.

Reporting policies and procedures should include a reference to the State of Michigan's legal requirements, including the definitions of child abuse and neglect, elder abuse and neglect, knowledge and/or treatment of certain injuries regardless of the age of the victim, the categories of persons who must report, what information must be in the report, and how a report should be made and documented.

Every U.S. state and territory has a law mandating certain (or sometimes all) individuals to report child abuse. Nearly every jurisdiction also requires reporting, under certain circumstances, the abuse of elders and/or vulnerable adults. In addition, all but five jurisdictions have laws mandating that health care providers report knowledge and/or treatment of certain injuries regardless of the age of the victim. A few jurisdictions require health care providers to obtain consent from adult victims before reporting injuries caused by domestic violence and/or sexual assault, but most do not.

## **What does this mean for Michigan?**

### **Elder Abuse**

“Vulnerable adult abuse” is a crime, and someone can go to jail if they commit vulnerable adult abuse. In this criminal law context, there are very specific definitions of vulnerable adult abuse. Reporters of elder abuse do not need the consent of the possible victim in order to report, but one would report details of abuse and not that either victim or proposed abuser is in treatment for SUD. Elder abuse falls under the mandatory reporting umbrella. Follow your facility’s policies and process for reporting elder abuse.

### **Child Abuse**

The Child Protection Act requires the reporting of child abuse and neglect by certain persons, to permit the reporting of child abuse and neglect by all persons, and to provide for the protection of children who are abused or neglected, among other things. Reporting suspected child abuse/neglect also does not require consent, but generally facilities explain this in the beginning of treatment and include it in the consent process. Follow your facility’s policies and process for reporting suspected child abuse/neglect.

### **Other Violent Injuries Requiring Mandatory Reporting**

Certain health care workers have a legal duty to report injuries resulting from knife, gun, pistol, or other deadly weapon, or by other means of violence. These types of injuries do not require an individual’s consent. Follow your facility’s policies and process for reporting violent injuries.

### **Sexual Assault/Domestic Violence**

Except in situations covered by mandatory reporting laws, the individual experiencing the assault, not health care workers, makes the decision to report a sexual assault to law enforcement. The exception is for those injuries that require mandatory reporting (e.g., gunshot and stab wounds, strangulation). The person injured must give consent unless it falls under the violent injuries provision requiring mandatory reporting. Follow your facility’s policies and process for dealing with sexual assault and/or domestic violence.

### **Crimes Committed at a Facility**

Facilities are allowed to report crimes committed on their premises or against individuals without individual consent. Follow your facility’s policies and process for reporting crimes committed at your facility.

## **Part 2**

Part 2 facilities are allowed to report crimes committed on their premises or against individuals without individual consent. They are also allowed to report suspected child or elder abuse and/or neglect.

**Notifications to law enforcement:** Law enforcement agencies can be notified if an immediate threat to the health or safety of an individual exists due to a crime on program premises or against program personnel. A Part 2 program is permitted to report the crime or attempted crime to a law enforcement agency or to seek its assistance (Title 42 CFR §2.12(c)(5)). Part 2 permits a program to disclose information regarding the circumstances of such incident, including the suspect’s name, address, last known whereabouts, and status as a individual in the program.

**Immediate threats to health or safety that do not involve medical emergencies or crimes on program premises or against program personnel:** Part 2 programs and health care providers and HIOs who have received Part 2 individual information, can make reports to law enforcement about an immediate threat to the health or safety of an individual or the public if patient-identifying information is not disclosed. Immediate threats to health or safety that do not involve a medical emergency or crimes (e.g., a fire) are not addressed in the regulations. Programs should evaluate those circumstances individually.

**Reports of child abuse and neglect:** The restrictions on disclosure do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities. However, Part 2 restrictions continue to apply to the SUD individual records maintained by the program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect (Title 42 CFR §2.12(c)(6)). Also, a court order under Part 2 may authorize disclosure of confidential communications made by an individual to a program in the course of diagnosis, treatment, or referral for treatment if, among other reasons, the disclosure is necessary to protect against an existing threat of life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect (Title 42 CFR §2.63(a)(1)).

While the Michigan Mental Health Code does not specifically address release of SUD records in accordance with abuse, assault, or other violent crimes, used in conjunction with the applicable State laws that do, it aligns with Part 2 and there are multiple scenarios where, while consent is not required, one must both protect the rights of the person undergoing SUD treatment and report in accordance with the law.

**Follow your facility's policies and process in how and when to do mandatory reporting of abuse/neglect, assault, violent crime, and crime.**

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**Caveat #11: To share PHI of a minor containing any mention of current or past SUD with a covered entity. This includes mention of any diagnoses, medications, names of clinicians, or facilities that can be associated with SUD treatment.**

**Title 42 CFR Part 2**

See §§2.14

It appears that clinician discretion applies.

**HIPAA**

See Title 45 CFR §164.506(a)

It appears that clinician discretion applies.

**Michigan Mental Health Code Act 258 of 1974**

See §330.1264(2)

It appears that clinician discretion applies.

**Michigan Mental Health Code Act 258 of 1974.** Clinician discretion appears to apply for non-Part 2 programs for medical reasons as for the treatment given or needed. However, as with adult individuals in this type of case, Part 2 programs may only disclose the minor individual's PHI with the minor's consent. In this case, Part 2 appears more stringent than Chapter 2A of the Michigan Mental Health Code because Part 2 appears more protective of the individual's privacy. Therefore, a program would need to determine whether they are a Part 2 program or not. (See "How Do I Know Which Legislation to Follow?" on page 6 and Glossary of Regulatory Terminology "Part 2 Program" on page 19 for more information.) Keep in mind, however, that in the State of Michigan, if you are a licensed covered entity providing SUD services, it likely you are regulated by both Chapter 2A of the Michigan Mental Health Code and Part 2, in which case Part 2 would apply because it is more protective of the minor's privacy.

It appears the minor must give consent before SUD PHI may be released with exception to the following situations: (1) the minor lacks capacity because of extreme youth or mental or physical condition to make a rational decision around whether to consent to a disclosure, and (2) the situation poses a substantial threat to the life or physical well-being of the minor.

For a minor who is or professes to be an individual with an SUD, consent for SUD related medical or surgical care, treatment, or services by a hospital, clinic, or health professional authorized by law executed is valid and binding if the minor had achieved the age of majority.

The consent of any other person, including a spouse, parent, guardian, or person in loco parentis (a person who is not

the parent or guardian of a minor, but who has either legal custody of a minor or physical custody of a minor and is providing support and care for the minor) is not necessary to authorize these services to be provided to a minor.

Under the Michigan Public Health Code, for medical reasons a treating physician and, on the advice and direction of the treating physician, a member of the medical staff of a hospital or clinic or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or individual in loco parentis as to the treatment given or needed. The information may be given to or withheld from these individuals without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information. Clinicians are to use their best clinical judgment as to whether PHI should be released without the minor's authorization.

Clinician discretion appears to apply for non-Part 2 programs. However, as with adult individuals in this type of case, Part 2 programs may only disclose the minor individual's PHI with the minor's consent (unless they are extremely young, lack competence, or are in immediate danger). In this case, Part 2 appears more stringent than Chapter 2A of the Michigan Mental Health Code and HIPAA because Part 2 is more protective of the individual's privacy. Therefore, a program would need to determine whether they're a Part 2 program or not. But again, in the State of Michigan, if you are a licensed covered entity providing SUD services, it is likely you are regulated by both Chapter 2A of the Michigan Mental Health Code and Part 2.

Be aware that in the State of Michigan, minors (aged 14 to 17 years), may obtain SUD disorder treatment, outpatient behavioral health treatment, abortion with judicial bypass, contraceptive services, STI services, and prenatal services without parental consent.

Also be aware that many health systems within the State of Michigan cut off parental access to children's health records between the ages of 11 to 13 years, and proxy access is required (the child must give permission for their parents/guardian to have access).

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**Caveat #12: For the personal representative or spouse of a minor to access PHI from a covered entity regarding STI/HIV when services are provided by clinicians NOT funded by Title X.**

#### **Michigan Public Health Code Act 368 of 1978**

See §333.5127(2)

It appears that clinician discretion applies as to the treatment given or needed.

#### **HIPAA**

See Title 45 CFR §160.203(b)

It appears that clinician discretion applies.

Under the Michigan Public Health Code, for medical reasons a treating physician, and on the advice and direction of the treating physician, a physician, a member of the medical staff of a hospital or clinic, or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or individual in loco parentis as to the treatment given or needed. The information may be given to or withheld from these individuals without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information. Clinicians are to use their best clinical judgment as to whether PHI should be released without the minor's authorization.

Be aware that in the State of Michigan, minors (aged 14 to 17 years), may obtain SUD treatment, outpatient behavioral health treatment, abortion with judicial bypass, contraceptive services, STI services, and prenatal services without parental consent.

Also be aware that many health systems within the State of Michigan cut off parental access to children's health records between the ages of 11 to 13 years, and proxy access is required (the child must give permission for their parents/guardian to have access).

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**Caveat #13: For the personal representative of a minor to access PHI from a covered entity about outpatient behavioral health care.**

**Michigan Mental Health Code Act 258 of 1974**

See §330.1707(1)

It appears that clinician discretion applies.

**Michigan Public Health Code Act 368 of 1978**

See §333.20201(2)(c)

It appears that clinician discretion applies.

**HIPAA**

See Title 45 CFR §164.203(b)

It appears that clinician discretion applies.

In Michigan, information may be given to parent, guardian, or individual in loco parentis for a compelling reason based on a substantial probability of harm to the minor or to another individual. (Michigan Mental Health Code §330.1707(1)).

A minor 14 years of age or older may request and receive mental health services and a mental health professional may provide mental health services, on an outpatient basis, excluding pregnancy termination referral services and the use of psychotropic drugs, without the consent or knowledge of the minor's parent, guardian, or individual in loco parentis. The minor's parent, guardian, or individual in loco parentis shall not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial probability of harm to the minor or to another individual, and if the minor is notified of the mental health professional's intent to inform the minor's parent, guardian, or individual in loco parentis.

Services provided to a minor shall, to the extent possible, promote the minor's relationship to the parent, guardian, or individual in loco parentis, and shall not undermine the values that the parent, guardian, or individual in loco parentis has sought to instill in the minor.

Services provided to a minor shall be limited to not more than 12 sessions or 4 months per request for services. After the 12th session or 4th month of services the mental health professional shall terminate the services or, with the consent of the minor, notify the parent, guardian, or individual in loco parentis to obtain consent to provide further outpatient services.

The minor's parent, guardian, or individual in loco parentis is not liable for the costs of services that are received by a minor.

This does not relieve a mental health professional from his or her duty to report suspected child abuse or neglect under section 3 of the Child Protection Law.

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**Caveat #14: For the personal representative of a minor to access PHI from a covered entity regarding contraceptive services provided by clinicians NOT funded by Title X or Title XIX.**

**Michigan Public Health Code Act 368 of 1978**

See §333.20201(2)(c)

It appears that clinician discretion applies.

**HIPAA**

See Title 45 CFR §164.524

It appears that clinician discretion applies.

Minors are allowed to seek contraceptive services without parental consent in the State of Michigan.

The minor has the exclusive right to exercise the rights of an individual under this act with respect to those medical records relating to that care.

Under HIPAA, generally, a parent, guardian, or other individual authorized by State law to consent to the minor's health care, has access to the minor's health information.

Exceptions:

- If minor has right to consent to health care under State or other law, minor has exclusive right to control access to health information relating to that care.
- If another individual authorized by law consents to the health care service, then parent has no right of access to health information concerning that service.
- When parent agrees to a confidential relationship between provider and minor, then parent has no right of access to health information concerning that service.
- Provider may refuse to provide parent with access in situations of domestic violence, abuse or neglect, or where minor could be endangered.
- Provider may disclose health information when required by State law, also in situations of imminent threat to the health and safety of the minor, another individual, or the public.

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**Caveat #15: For the personal representative of a minor to access PHI from a covered entity regarding abortion services for that minor when parental consent has been given.**

**Michigan Public Health Code Act 368 of 1978**

See §333.20201(2)(c)

It appears that director discretion applies.

**HIPAA**

See Title 45 CFR §164.203(b)

It appears that clinician discretion applies.

In Michigan, a minor who has received abortion services may consent to their personal representative having permission to access that abortion information (Parental Rights Restoration Act, MCL 722.901–722.909). However, per the Michigan Child Protection Law, director discretion applies (Michigan Child Protection Law §722.627d). NOTE: Per the Michigan Child Protection Law, pregnancy of a child less than 12 years of age shall be reasonable cause to suspect child abuse or neglect has occurred and must be reported (Michigan Child Protection Law §722.623).

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**Caveat #16: For the personal representative of a minor to access PHI from a covered entity regarding prenatal and pregnancy related health care service provided by clinicians NOT funded by Title X.**

**Michigan Public Health Code Act 368 of 1978**

See §§333.9132(2), 333.9132(4)

It appears that clinician discretion applies.

**HIPAA**

See Title 45 CFR §164.203(b)

It appears that clinician discretion applies.

Before providing care, the individual must be informed that notification may take place. For medical reasons, information may be given to or withheld from spouse, parent, guardian, or individual in loco parentis without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.

Minors (aged 14-17 years) are allowed to seek prenatal and pregnancy services without parental consent in the State of Michigan. Note: the pregnancy of a child less than 12 years of age or the presence of a sexually transmitted infection

in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse or child neglect has occurred.

The minor has the exclusive right to exercise the rights of an individual under this act with respect to those medical records relating to that care.

Under HIPAA, generally, a parent, guardian or other individual authorized by State law to consent to the minor's health care, has access to the minor's health information.

Exceptions:

- If minor has right to consent to health care under State or other law, minor has exclusive right to control access to health information relating to that care.
- If another individual authorized by law consents to the health care service, then parent has no right of access to health information concerning that service.
- When parent agrees to a confidential relationship between provider and minor, then parent has no right of access to health information concerning that service.
- Provider may refuse to provide parent with access in situations of domestic violence, abuse or neglect, or where minor could be endangered.
- Provider may disclose health information when required by State law, also in situations of imminent threat to the health and safety of the minor, another individual, or the public.

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**Caveat #17: For covered entities to provide information on individuals that are in the individuals' best interest as determined by the covered health care clinician, in the exercise of personal judgment, during severe disaster (hurricanes, fire, earthquakes, etc.) or national public health emergency (for physical health records).**

#### **Michigan Public Health Code Act 368 of 1978**

See §333.20201(2)(c)

It appears that clinician discretion applies.

#### **HIPAA**

See Title 45 CFR §§164.510(a), 164.510(b), 164.520, 164.522(b)

It appears that clinician discretion applies.

According to the Michigan Public Health Code, an individual or resident is entitled to confidential treatment of individual's personal and medical records, and may refuse their release to an individual outside the health facility or agency, except as required because of a transfer to another health care facility, as required by law or third party payment contract, or as permitted, or required under HIPAA.

Medical information may be disclosed to a public or private entity, such as the American Red Cross, for the purpose of coordinating with that entity to assist in disaster relief efforts.

HIPAA's guidelines about emergency circumstances allow for use or disclosure of some or all of the PHI if it is in the individual's best interest as determined by the covered health care clinician's professional judgement.

The HIPAA Privacy Rule is not suspended during a national or public health emergency. However, the Secretary of the U.S. Department of Health and Human Services may waive certain provisions of the Rule under the Project Bioshield Act of 2004 (PL 108-276) and §1135(b)(7) of the Social Security Act. Further, if the President declares an emergency or disaster and the Secretary declares a public health emergency, the Secretary may waive sanctions and penalties against a covered hospital that does not comply with certain provisions of the HIPAA Privacy Rule: the requirements to obtain an individual's agreement to speak with family members or friends involved in the individual's care (Title 45 CFR §164.510(b)); the requirement to honor a request to opt out of the facility directory (Title 45 CFR §164.510(a)); the requirement to distribute a notice of privacy practices (Title 45 CFR §164.520); the individual's right to request privacy restrictions (Title 45 CFR §164.522(a)); the individual's right to request confidential communications (Title 45 CFR §164.522(b)).

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**Caveat #18: Spouse, family, and or/friends that are involved in the care of an individual are seeking information because the individual has overdosed and/or the individual is incapacitated (from a behavioral health or general medical standpoint vs. SUD treatment).**

**Michigan Mental Health Code Act 258 of 1974**

See §§330.1280, 330.1748(5)(g), 330.1748(8)(b)(i)

It appears that individual consent is required unless individual is being held in protective custody or has died.

**HIPAA**

See Title 45 CFR §§164.510(b)(1)(i), 164.510(b)(3)

It appears that clinician discretion applies.

Under normal circumstances, individual consent is necessary and ideally would have been collected upon admission. If an individual was being held in protective custody and/or has died, the individual's family, next of kin, or someone whom the individual designated shall be notified as promptly as possible.

Also, in following the Michigan Mental Health Code, if the individual in question is not in protective custody, then information may be released regarding 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.

HIPAA would allow for clinician discretion, but in this instance, it appears that the Mental Health Code offers more protection, and therefore, individual consent is necessary.

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**Caveat #19: A covered entity receives a request under an order, a subpoena of a court of record, or a subpoena of the legislature for SUD records.**

**Michigan Mental Health Code Act 258 of 1974**

See §330.1748

It appears that individual consent is required in most instances.

**Title 42 CFR Part 2**

See §2.61-2.67; see also Title 42 USC §290dd-2

It appears that individual consent is required unless there is a special court order.

Part 2 recognizes the sensitivity of SUD individual records by requiring a special court order before turning over individual records in response to a subpoena, search warrant, or law enforcement request.

More stringent State law applies (see Title 45 CFR §164.203(b)) **when information requested contains mental health/SUD records regulated under the Michigan Mental Health Code.**

In this case, individual consent is necessary per the Michigan Mental Health Code §330.1748.

An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of individual information which would otherwise be prohibited by Title 42 USC 290dd-2 and the corresponding regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as, and accompany, an authorizing court order entered under the regulations in this part.

Clinicians would follow the Michigan Mental Health Code and HIPAA's guidelines listed in §164.512.

- (1) *Permitted disclosures: Pursuant to process and as otherwise required by law.* A covered entity may disclose PHI:
- As required by law, including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or

- A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer; or
- A grand jury subpoena; or
- An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
  - The information sought is relevant and material to a legitimate law enforcement inquiry;
  - The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and de-identified information could not reasonably be used.

(2) *Permitted disclosures: Limited information for identification and location purposes.* Except for disclosures required by law as permitted by paragraph (1) of this section, a covered entity may disclose PHI in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing individual.

**When in doubt, check with your facility legal counsel.**

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**Caveat #20: A covered entity feels that there is an immediate threat to health and/or safety of an individual receiving SUD treatment and/or individual has mentioned so they contact law enforcement.**

**Michigan Mental Health Code Act 258 of 1974**

See §§330.1276, 330.1438, 330.1946

The Michigan Mental Health Code does not appear to address the specific issue of a covered entity contacting law enforcement to report such an immediate threat. The statutory authority does address situations in which an individual is taken into protective custody with or without consent of the individual by law enforcement.

**Title 42 CFR Part 2**

See Title 42 CFR §§2.12(c)(5), 2.51(a)

Follow your facility's policies and process for reporting immediate threats to the health and/or safety of an individual.

Programs should have in place well-developed plans to promote staff and patient safety, including protocols for response by local law enforcement agencies or security contractors.

The emergency preparedness plan should include a violence risk reduction plan: a standard response action plan for violent situations, including the availability of assistance, response to alarm systems, and communication procedures.

Disclosure of SUD information without individual consent is limited to reporting crime or threats on Part 2 premises or against Part 2 personnel.

Part 2 permits the disclosure of information under certain circumstances without consent during a medical emergency or in other limited situations. If a Part 2 program (or a health care provider that has received Part 2 individual information) believes that there is an immediate threat to the health or safety of any individual, there are steps described below that the Part 2 program or health care provider can take in such a situation.

**Notifications to medical personnel in a medical emergency:** A Part 2 program can make disclosures to medical personnel if there is a determination that a medical emergency exists (i.e., there is a situation that poses an immediate threat to the health of any individual and requires immediate medical intervention) (Title 42 CFR §2.51(a)). Information disclosed to the medical personnel who are treating such a medical emergency may be re-disclosed by such personnel for treatment purposes as needed.

**Notifications to law enforcement:** Law enforcement agencies can be notified if an immediate threat to the health or safety of an individual exists due to a crime on program premises or against program personnel. A Part 2 program is permitted to report the crime or attempted crime to a law enforcement agency or to seek its assistance (Title 42 CFR §2.12(c)(5)). Part 2 permits a program to disclose information regarding the circumstances of such incident, including the suspect's name, address, last known whereabouts, and status as an individual in the program.

Follow your facility's policies and process for reporting immediate threats to the health and/or safety of an individual.

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**Caveat #21: A covered entity receives a request for an individual's behavioral health PHI as a result of a legal issue WITHOUT subpoena or court ordered request.**

**Michigan Mental Health Code Act 258 of 1974**

See §§330.1261, 330.1262, 330.1263, 330.1748

It appears that clinician discretion applies.

**HIPAA**

See §164.512

It appears that clinician discretion applies.

Generally speaking, PHI relating to mental health must not be released for legal issues unless an individual has given authorization, or subpoena or court order has been received. But there are a few instances where it might be necessary in order to comply with another provision of law, or it might be necessary to release it to the department if the information is necessary in order for the department to discharge a responsibility placed upon it by law, or it might be necessary to release PHI to the office of the auditor general if the information is necessary for that office to discharge its constitutional responsibility.

**When in doubt, check with your facility legal counsel.**

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**Caveat #22: A covered entity receives a request for an individual's physical health PHI as a result of a legal issue WITHOUT subpoena or court ordered request.**

**Michigan Public Health Code Act 368 of 1978**

See §333.20201(2)(c)

It appears that individual consent is required.

**HIPAA**

See Title 45 CFR §164.512

It appears that clinician discretion applies.

Under the Michigan Public Health Code, an individual or resident is entitled to confidential treatment of personal and medical records, and may refuse their release to an individual outside the health facility or agency, except as required because of a transfer to another health care facility, as required by law or third party payment contract, or as permitted or required under HIPAA.

Generally speaking, PHI must not be released for legal issues unless an individual has given authorization, or a subpoena or court order has been received, but there are health oversight matters that can be of a legal nature where individual authorization is not needed.

Under HIPAA, a covered entity may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

- The health care system;
- Government benefit programs for which health information is relevant to beneficiary eligibility;
- Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
- Entities subject to civil rights laws for which health information is necessary for determining compliance.

A health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

- The receipt of health care;
- A claim for public benefits related to health; or
- Qualification for, or receipt of, public benefits or services when an individual's health is integral to the claim for public benefits or services.

Under HIPAA, PHI may also be released to law enforcement for some of the following things (for complete details, see HIPAA §164.512):

- Limited information for identification and location purposes.
- As required by law, including laws that require the reporting of certain types of wounds or other physical injuries.
- The information sought is relevant and material to a legitimate law enforcement inquiry.
- A covered entity may disclose limited specific PHI in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing individual.
- The law enforcement official represents that such information is needed to determine whether a violation of law by an individual other than the victim has occurred, and such information is not intended to be used against the victim.
- The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
- The disclosure is in the best interests of the individual as determined by the covered entity in the exercise of professional judgment.
- A covered entity may disclose PHI about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.
- A covered entity may disclose to a law enforcement official PHI that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

Otherwise, if the request is related to disclosures for judicial and administrative proceedings, they are only permitted disclosures when they are in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the PHI expressly authorized by such order, or are in response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal.

Individual authorization is required for use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual.

**When in doubt, check with your facility legal counsel.**