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Owner: Kip Kliber: Director, Recipient Rights
Policy Area: Recipient Rights
References:

Fingerprinting, Photographing, Audio Taping and Use of One-Way Glass

POLICY

It is the policy of the Detroit Wayne Mental Health Authority (DWMHA) that recipients receiving services in this service area shall be fingerprinted, photographed, audio-taped or viewed through one-way glass only when prior written consent is obtained from the recipient or his/her legal representative.

PURPOSE

To provide policy direction for fingerprinting, photographing, audiotaping, or viewing through one-way glass, of a recipient.

APPLICATION

1. The following groups are required to implement and adhere to this policy: DWMHA Board, DWMHA Staff, Contractual Staff, Access Center, MCPN Staff, Network Providers, Crisis services vendor
2. This policy serves the following populations: Adults, Children, I/DD, SMI/SEI, SED, Autism
3. This policy impacts the following contracts/service lines: MI-HEALTH LINK, Medicaid, Autism, Grants, General Fund

KEYWORDS

1. Consent
2. Photographing
3. Public news media

STANDARDS

1. Use of fingerprints, photographs, audiotapes, or 1-way glass in order to provide services:
 - a. Fingerprints, photographs or audio-tapes may be taken and used and 1-way glass may be used in order to provide services, including research, to a recipient only when prior written consent is obtained from one of the following:
 1. The recipient, if 18 years of age or over and competent to consent.

2. The guardian of the recipient, if the guardian is legally empowered to execute such consent.
 3. The parent with legal and physical custody of the recipient, if the recipient is less than 18 years of age.
 - b. The consenting individual must be able to understand what the personal implications of providing consent will be.
 - c. Fingerprints, photographs or audiotapes taken in order to provide services to a recipient, and any copies of them, shall be kept as part of the record of the recipient.
 - d. Fingerprints, photographs or audio-tapes and any copies thereof in the record of the recipient shall be given to the recipient or destroyed when they are no longer essential to service provision or upon discharge of the recipient, whichever occurs first.
2. Fingerprints, photographs or audio-tapes taken in order to determine the name of a recipient:
 - a. Fingerprints, photographs or audiotapes taken for the purpose of determining the name of a recipient shall be kept as part of the record of the recipient, except that, when necessary, these may be delivered to others for assistance in the determination.
 - b. Fingerprints, photographs or audiotapes so delivered shall be returned together with any copies that were made. An individual receiving fingerprints, photographs or audiotapes shall be informed of the requirement that return be made. Upon return, these together with any copies shall be kept as part of the record of the recipient.
 - c. Fingerprints, photographs or audio-tapes and any copies thereof in the record of the recipient shall be given to the recipient or destroyed when they are no longer essential in determining the name of the recipient or upon discharge of the recipient, whichever occurs first.
 3. Photographs or audio-tapes for personal information or social purposes:
 - a. Photographing or audiotaping may be done for purely personal informational or social purposes.
 - b. Photographs or audiotapes of a recipient shall not be taken, made, or used if the recipient has indicated his or her objection.
 4. Photographs, audio-tapes or use of 1-way glass for educational or training purposes:
 - a. Photographs or audiotapes may be taken and 1-way glass used for educational or training purposes only when prior written consent is obtained from one of the individuals described in subsection 1.a.1-3 above.
 5. Sections 1-4 do not apply to recipients of mental health services referred under Chapter 10 of the Michigan Mental Health Code, P.A. 258 of 1974 as amended, "Criminal Provisions, Transfer of Prisoners".
 6. Photographing, audio-taping or use of 1-way glass by or on behalf of public news media:
 - a. Photographing, audiotaping or viewing a recipient through 1-way glass by or on behalf of public news media is permitted when prior written consent is obtained from an individual described in subsection 1.a.1-3 above **and** the director of contract service provider.
 - b. If the director refuses to sign the consent despite the affirmative wishes of the recipient, guardian or appropriate parent, his/her decision may be appealed in accordance with the DWMHA's Policy on Dispute Resolution Grievance and Appeal Systems.
 7. Written consent must include, for the purposes of this section:

- a. Specific date of expiration;
 - b. Statement of intended use of photograph(s) (e.g., in newspapers, television, professional journal, etc.) or audio-tape(s) or purpose for 1-way viewing.
 - c. Statement approving or not approving use of recipient's full name by news media.
8. Conditions of consent, for the purposes of this section:
- a. Consent may be obtained upon admission.
 - b. No consent is valid for more than a 12-month period, but may be renewed through the consent process.
 - c. Consent may be terminated by the recipient, the appropriate parent of a minor or a guardian so empowered, prior to the expiration date.
 - d. No consent may be given out on behalf of a minor which extends beyond the recipient's eighteenth birthday.
 - e. Written consent must be on file in the recipient's case record.
9. Consent may be withdrawn without the intervention of an element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, including promises or assurances of privileges or freedom.
- a. There shall be an instruction that an individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient
10. A recipient must be advised immediately prior to the time a photograph is to be taken, or voice recorded, or viewed through 1-way glass and must be afforded an opportunity to object. If the recipient expresses verbal objection to being photographed, audiotaped, or viewed through 1-way glass, such objection shall be honored whether or not the recipient, guardian or parent has previously signed a consent form for such procedure.
11. News media representatives, while in a contract service provider service site, shall be accompanied by a person designated by the contract service provider director. This staff person shall be responsible for:
- a. Providing a copy of this policy to the news media representative prior to granting approval for photographing, audio-taping, or viewing a recipient through 1-way glass;
 - b. Checking validity of consent for each participating recipient;
 - c. Advising each recipient that a photograph, audio-tape or viewing through 1-way glass is to take place and for what purpose;
 - d. Assuring that a verbal objection is honored if the recipient does not wish to participate;
 - e. Making an entry in the recipient's case record whenever a photograph is taken, whenever an audiotape is made, or a viewing through 1-way glass is done, by or, on behalf of, the news media, noting the date and intended use.
 - f. The staff person shall accompany the news media representative only for the purpose of assuring that a.-e. above are accomplished. Staff shall not interfere with the recipient's right to communicate freely with the news media representative unless a specified limitation has been imposed by the MCPN, contractor or subcontractor Director or the director's designee.
 - g. Approval shall not be given for photographing recipients when the intent is to avoid identification by blocking out faces of recipients.

- h. News media may be permitted to take and use pictures of DWMHA service sites which do not include photographs of recipients of services or in which recipients are not identifiable.
 - i. A copy of the signed consent form(s) shall be made available upon request to an authorized media representative.
12. Video surveillance, i.e. recording, may be done only in common areas of a psychiatric hospital and only for the purposes of safety, security and quality improvement. This constitutes an exception to the requirement of prior written consent of the recipients and legal representatives as well.
- a. Child Caring Institutions (CCI) and Adult Foster Care (AFC) homes may not video **record**, i.e. capture the images of multiple recipients in common areas of the facility.
 - b. CCI's and AFC's may, however, **monitor** activity within and around the facility, with cameras where the images **are not** captured and recorded.
 - c. This prohibition only applies to CCI's that exclusively serve children with developmental disabilities, including autism spectrum disorder, where these services are covered by Medicaid.

QUALITY ASSURANCE/IMPROVEMENT

DWMHA shall review and monitor contractor adherence to this policy as one element in its network management program, and as one element of the QAPIP Goals and Objectives.

The quality improvement programs of MCPNs, their subcontractors, and direct contractors must include measures for both the monitoring of and the continuous improvement of the programs or processes described in this policy.

COMPLIANCE WITH ALL APPLICABLE LAWS

DWMHA staff, MCPNs, contractors, and subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives, as amended.

LEGAL AUTHORITY

1. Michigan Mental Health Code, P.A. 258 of 1974, as amended, MCL 330.1724
2. Michigan Department of Community Health, Division of Program Development, Consultation and Contracts: Memo on "Video Recording in Licensed Adult Foster Care Homes" dated January 24, 2014.

RELATED POLICIES

1. DWMHA Policies (All DWMHA policies refer to the most recent at the time of writing):
 - a. Consent to Treatment and Services
 - b. Individual Plan of Service/Person-Centered Planning
 - c. Services Suited to Condition in the Least Restrictive Environment
 - d. Treatment with Dignity and Respect

RELATED DEPARTMENTS

1. Administration

2. Clinical Practice Improvement
3. Customer Service
4. Integrated Health Care
5. Managed Care Operations
6. Quality Improvement
7. Recipient Rights

CLINICAL POLICY

YES

INTERNAL/EXTERNAL POLICY

EXTERNAL

Attachments:

No Attachments

Approval Signatures

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Approver	Date
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