Policy & Procedure

POLICY: #907 - Confidentiality, Use, and Disclosure of Protected Health Information (PHI)

SECTION: Corporate Compliance

MAINTAINED BY: Compliance/Privacy Officer and Director of Recipient Rights

Approved By: _____
Chief Executive Officer

Approved By: _____
Medical Director (if applicable)

APPLIES TO:
- ☒ OnPoint Board of Directors
- ☒ OnPoint Staff
- ☒ Contracted Providers
- ☐ Other: _____

First Effective: 05/2019
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PURPOSE

To outline requirements regarding the confidentiality, use and, disclosure of Protected Health Information (PHI) and Individually Identifiable Health Information (IIHI) which is protected by Federal Law and Regulation and the right to confidentiality, which is a right of clients served as identified in the Michigan Mental Health Code (MHC), and the Michigan Department of Health and Human Services (MDHHS) Administrative Rules and Public Act 129 of 2014. In addition, Public Act 559 of 2016 amended the Michigan Mental Health Code (MHC) to better align with HIPAA (Health Insurance Portability and Accountability Act).

DEFINITIONS

In addition to the definitions below, please Refer to Attachment 900.4 Compliance Related Definitions and Terms which can be found at:
Access via OnPoint Intranet at: Policies & Procedures- Compliance
Access via OnPoint Website at: Providers – OnPoint

Authorization – synonymous with "Consent" and "Release of Information" (ROI).

Consent – a written agreement executed by an individual or legal representative with authority to execute a consent, or for mental health records a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

Confidential Information
All information in the record of a recipient, created or received by applicable programs/services, and all other information acquired in the course of providing behavioral health services to a recipient. For the purposes of this policy "confidential information" includes both PHI and IIHI. Definitions for PHI and IIHI can be found in 900.4 Compliance Related Definitions and Terms at the link above.

Coordination of Care
A set of activities to ensure needed, appropriate, and cost-effective care for the person served. As a component of overall care management, care coordination activities focus on ensuring timely information, communication, and collaboration across the care team. Major priorities for care coordination in the context of a care management plan include:

1. Outreach and contacts/communication to support client engagement.
2. Conducting screening, record review, and documentation as part of Evaluation and Assessment

3. Tracking and facilitating follow-up on lab tests and referrals
4. Care planning
5. Managing transitions of care activities to support continuity of care
6. Address social supports and making linkages to services addressing social determinants of health, and
7. Monitoring, reporting and documentation.

Counseling Notes SUD counseling notes are defined as notes recorded by a substance use disorder (SUD) or mental health professional during counseling sessions. These notes document or analyze the contents of conversations during private, group, joint, or family counseling sessions and are kept separate from the patient's medical record. They can be recorded in any medium, including paper or electronic formats, and requires specific consent for use or disclosure.

Detrimental
A determination by a recipient's treating clinician or a clinical supervisor that, based upon professional clinical judgement, release of the requested information (in whole or part) would negatively impact the recipient or others. 45 CFR 164.524(a) (3), states that the reviewable grounds fordenial includes:

1. The access requested is reasonably likely to endanger the life or physical safety of the individual or another person. This ground for denial does not extend to concerns about psychological or emotion harm (e.g., concerns that the individual will not be able to understand the information or may be upset by it).
2. The access requested is reasonably likely to cause substantial harm to a person (other than a health care provider) referenced in the PHI.
3. The provision of access to a personal representative of the individual that requests such access is reasonably likely to cause substantial harm to the individual or another person.

Keeper of the Record
For purposes of this policy, the keeper of the record is the Chief Executive Officer (CEO) or designee, as appointed by the CEO.

Legal Representative
A recipient's guardian who has the authority to consent; a parent with legal custody of a minor recipient; or court appointed personal representative or executor of the estate of a deceased recipient.

Payment
"Payment" is broadly defined as activities by health plans or health care providers to obtain premiums or obtain or provide reimbursements for the provision of health care. The activities specified are by way of example and are not intended to be an exclusive listing. Billing, claims management, collection activities and related data processing are expressly included in the definition of "payment."

Person served or Recipient/Consumer/Client/Individual
A person who has applied for, or who is receiving, CMH services/supports and for whom a clinical record has been established or for whom other PHI/IIHI has been acquired.

Privileged Communication
A communication made to a psychiatrist or psychologist in connection with the examination, diagnosis or treatment of a recipient, or to another person while the other person is participating in the examination, diagnosis or treatment or a communication made privileged under other applicable state or federal law. (Michigan Mental Health Code, Public Act 258 of 1974, 330.1700 – 330.1750) NOTE: It is important to read and understand the rules prior to disclosure.

Psychotherapy Notes
As defined by 45 CFR 164.501 Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are separate from the rest of the record. Psychotherapy notes do not include any information about medication prescription and monitoring counseling session start and stop times, the modalities and frequencies of treatment furnished, or results of clinical tests, nor do they include summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.
Psychotherapy notes do not include any information that is maintained in a medical record.

Record
All information in paper or electronic format which relates to application for or services an individual receives from OnPoint. The OnPoint CEO is the official keeper of the record and, as such, delegates responsibility to service providers to maintain appropriate clinical documentation in a provider's record.

Treatment
Treatment generally means the provision, coordination, or management of healthcare and related services by one or more healthcare providers. This includes activities such as consultation between healthcare providers regarding a patient, referral of a patient from one provider to another, and the management of healthcare services by a provider with a third party.

POLICY
It is the policy of OnPoint that information obtained in the course of providing services and/or in the record of a recipient in any form will be kept confidential. The use and disclosure of Protected Health Information (PHI) and/or Individually Identifiable Health Information (IIHI) will be governed by HIPPA regulation, and the "minimum necessary" standards outlined therein, the Michigan Mental Health Code as amended, and 42 CFR Part 2 governing substance use disorder records. Confidential information will not be open to public inspection and will not be released without the authorization of the recipient or their authorized representative except as allowed by law.

PROCEDURE(S)

I. MENTAL HEALTH RECORDS

A. Confidential mental health information **may** be disclosed **without** authorization from the client, or their legal representative as follows:

1. For sharing mental health records for the purposes of payment, treatment, and coordination of care in accordance with HIPAA and the MHC.
2. Pursuant to orders or subpoenas of a court of record, or subpoenas of the legislature, unless the information is made privileged by law.
3. To a prosecuting attorney as necessary for the prosecuting attorney to participate in a proceeding governed by the MHC.
4. When necessary, in order to comply with another provision of law (e.g., Children's Protective Services Act).
5. To the MDHHS (Michigan Department of Health and Human Services) when the information is necessary in order for the MDHHS to discharge a responsibility placed on it by law, including LARA (Licensing and Regulatory Affairs).
6. To the office of the auditor general when the information is necessary for that office to discharge its constitutional responsibility.
7. To a surviving spouse of a client for purposes of applying for and receiving benefits or, if there is no

surviving spouse, to the person or persons most closely related to the deceased client within the third degree of consanguinity as defined in civil law, but only if spouse or closest relative has been designated the personal representative or has a court order.

8. Confidential information in the recipient's record shall be disclosed to the adult recipient, upon his/her request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. Release is done as expeditiously as possible but in no later than 30 days of the request or prior to release from treatment.
9. To service providers or a public agency, if there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or other individuals. This is a discretionary disclosure and must be authorized by the keeper of the record or designee in accordance with OnPoint Policy #1305 Duty to Warn.
10. When there is a compelling need for mental health records or information to determine whether child abuse or child neglect has occurred or to take action to protect a minor where there may be a substantial risk of harm in accordance with the MHC and law. Per MHC 330.1748a(1), a DHHS caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a mental health professional that a child abuse or neglect investigation has been initiated involving a person who has received services from a mental health professional and shall request in writing mental health records and information in the mental health professional's possession to determine if there are mental health records or information that is pertinent to that investigation. Upon receipt of notice from DHHS that a child may be subject to an alleged abuse or neglect case, the mental health professional shall review all mental health records and information in their possession to determine if there are records or information that is pertinent to the DHHS investigation. Within 14 days after receipt of a request made by DHHS, the mental health professional shall release those pertinent mental health records and information to the DHHS caseworker or administrator directly involved in the child abuse or neglect investigation. To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 or 691.1415, an individual who in good faith gives access to mental health records or information under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.
11. To the Secret Service investigating a threat to the President of the United States.
12. To Public Health for public health code mandated information reporting concerning specific conditions such as communicable diseases.
13. The keeper of the record may disclose information that enables a recipient to apply for or receive benefits without the consent of the recipient or legally authorized representative only if the benefits shall accrue to the state or shall be subject to collection for liability for mental health services.
14. If required by federal law, OnPoint will grant a representative of the protection and advocacy system designated by the governor in compliance with section 931 (Disability Rights of Michigan or current) access to the records of all of the following [330.1748(8)]:
    a. A recipient or the recipient's guardian with authority to consent, or a minor's parents with physical and legal custody of the recipient, have consented to the access.
    b. A recipient, including a recipient who has died or whose location is unknown, if <u>all</u> of the following apply:
        i. Because of mental or physical condition, the recipient is unable to consent to the access
        ii. The recipient does not have a guardian or other legal representative or the recipient's guardian is the State
        iii. The protection and advocacy system has received a complaint on behalf of the recipient, or has probable cause to believe, based on monitoring or other evidence, that the recipient has been subject to abuse or neglect.
    c. A recipient who has a guardian or other legal representative if <u>all</u> the following apply:

i. A complaint has been received by the protection and advocacy system or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
ii. Upon receipt of the name and address of the recipient's legal representative, the protection and advocacy system has contacted the representative and offered assistance in resolving the situation.
iii. The individual's legal representative has failed or refused to act on behalf of the recipient.

B. Confidential mental health information **may** be disclosed **with** authorization from the recipient, or their legal representative as follows:
1. Except as otherwise provided in section VI. below, if consent has been obtained from the recipient or their legal representative , information made confidential by this policy may be disclosed to the recipient, his or her guardian, the parent of a minor, or another an individual or agency unless, in the written judgement of the holder (of the record), the disclosure would be detrimental to the recipient or others. (See V.A.3 & 4 below for steps to follow with regard to withholding for detriment)
2. To a representative of Disability Rights of Michigan pursuant to a written request when a client, the client's guardian with the authority to consent, a minor client over the age of 14, or a minor client's parent with legal and physical custody of the individual, if the minor is under the age of 14, has authorized the access.
3. To an attorney

II. <u>Substance Use Disorder Disclosures</u>
A. Substance use disorder records (diagnosis, referral, and/or treatment for an alcohol or substance use disorder) are protected under Federal statute that requires the individual to specifically state on a disclosure that these records may be released. When the record also contains substance abuse information (i.e., Co-occurring Services) the requirements found in 42 CFR Part 2, the federal law governing the disclosure of this information must also be followed.
B. Federal law generally prohibits the re-disclosure of substance use disorder information unless the re-disclosure is expressly permitted by the written consent. Federal law requires that a specific notice regarding re-disclosure accompany any disclosure of substance use disorder information that is shared with written consent. (42 CFR 2.32).

III. HIV, AIDS, ARC records, including the fact a recipient has been tested for these conditions or any reference to these conditions, are protected by State statute. The release must specifically state that this information may be released.

IV. <u>Disclosure During Judicial and Administrative Proceedings</u>
A. The individual who sought commitment is not eligible to view the records of an individual, receive copies and/or authorize release to others, unless authorized by law, regulation, and the provisions of this policy.
B. Information shall be provided to attorneys, other than prosecuting attorneys, as follows:
1. An attorney who has been retained or appointed to represent a minor pursuant to an objection to hospitalization of a minor shall be allowed to review the records.
2. Attorneys who are not representing recipients may review records only if the attorney presents a certified copy of an order from a court (signed by a Judge) directing disclosure of information concerning the recipient to the attorney.
3. Attorneys shall be refused information by phone or in writing without the consent or release from the recipient or the request is accompanied or preceded by a certified copy of an order (signed by a Judge) from a court ordering disclosure of information to that attorney.

4. Attorneys shall be refused information by phone or in writing without the consent or release from the recipient or the request is accompanied or preceded by a certified copy of an order (signed by a Judge) from a court ordering disclosure of information to that attorney.

C. Information may be disclosed in a judicial or administrative proceeding or to a prosecuting attorney during a civil commitment process, in response to a court order (signed by a Judge) to the extent the information is described in that order.

D. Information shall be provided to the physicians or psychologist appointed by the court or retained to testify in civil, criminal, or administrative proceedings as follows:

1. A physician or psychologist who present identification and a certified true copy of a court order shall be permitted to review, on the provider's premises, a record containing information concerning the recipient. Physicians or psychologists shall be notified before the review of records when the records contain privileged communication that cannot be disclosed in court under section 750(1) of the Act.
2. A prosecutor may be given non-privileged information or privileged information if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission, information relevant to alternatives to admission to a hospital or facility or other information designed in the policies of the provider.

V. Disclosure of Information for Purposes of Research

A. PHI may be used for purposes of Research only when:

1. Authorized by the recipient.
2. A waiver of authorization is obtained by an Institutional Review Board (IRB) or Privacy Board established according to Federal Regulation and the CEO approves the research.

B. When a waiver of authorization is presented, it must include identification of the IRB or Privacy Board and a statement that the following waiver criteria are met:

1. The use or disclosure involves no more than minimal risk to the recipient based on an adequate plan to protect identifiers from improper use, a plan to destroy identifiers at the earliest opportunity, unless there is a health or research purpose for retaining or retention is required by law, and adequate written assurance that the information will not be reused or disclosed to any other person except as required by, for oversight of the research or for other research for which use or disclosure would be permitted.
2. The research could not be practicably conducted without the waiver.
3. The research could not be practicably conducted without the PHI.

VI. Reproductive Health Care [45 CFR 164.502(a)(5)(iii)]

A. OnPoint or a business associate may not use or disclose PHI for any of the following activities:

1. To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.
2. To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.
3. To identify any person for any purpose described above.

B. Scope: For the purposes of this subpart, seeking, obtaining, providing, or facilitating reproductive health care includes, but is not limited to, any of the following: expressing interest in, using, performing, furnishing, paying for, disseminating information about, arranging, insuring, administering, authorizing, providing coverage for, approving, counseling about, assisting, or otherwise taking action to engage in reproductive health care; or attempting any of the same.

VII. Psychotherapy and SUD Counseling Notes

Psychotherapy and SUD Counseling notes (see definitions) are not part of the individual's record and are not to be released as part of the individual record review.

VIII. Privileged Communication

A. Privileged communication shall not be disclosed in civil, criminal, legislative or administrative cases or proceedings, or in proceedings preliminary to these unless the recipient has waived the privilege, except in the following circumstances:
   1. If the privileged communication is relevant to a physical or mental condition of the recipient which the recipient has introduced as an element of his/her claim or defense in civil or administrative case of proceeding, or which, after the recipient's death, has been introduced as an element of his/her claim or defense by a party of civil or administrative case of proceeding.
   2. If the communication is relevant to a matter under consideration in proceeding governed by the Mental Health Code, but only if the recipient was informed that any communication could be used in the proceeding.
   3. If the communication is relevant to a matter under consideration in a proceeding to determine legal competence or the need for a guardian, but only if the recipient is informed that any communication made could be used in such a proceeding.
   4. In a civil action by or on behalf of a recipient or a criminal action arising from the treatment of the recipient against the mental health professional for malpractice.
   5. If the communication was made during an examination ordered by a court and the recipient was informed that the communication would not be privileged, but only with respect to the particular purpose for which the examination was ordered (e.g., court-ordered custody evaluation).
   6. When the communication was made during treatment the recipient was ordered to undergo to render him/her competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with competence or the recipient to stand trial.

B. In instances where disclosure or privileged communication is prohibited, the fact that the recipient has been examined or treated or undergone diagnosis will also not be disclosed, unless relevant to a determination by a health care insurer, health care corporation, nonprofit dental care corporation or health maintenance organization of its rights and liabilities under a policy, contract or certification of insurance or health care benefits.

IX. Disclosures Made in Response to Government Investigations, Subpoenas, and Warrants

Please see Policy 912 Responding to Government Investigations Subpoenas and Warrants

X. Authorization/Consent

A. In obtaining written authorization for the disclosure of confidential mental health and substance use disorder information for use by all public and private agencies, departments, corporations, or individuals that are involved with treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability, or substance use disorder, OnPoint and its provider network shall honor, accept and use the MDHHS-5515, "Consent to Share Behavioral Health Information" also referred to as the "5515" , for the electronic and non-electronic sharing of all behavioral health and SUD information, in compliance with PA 129 of 2014 and MCL 330.1141a.

B. The Consent to Share Behavioral Health Information form (MDHHS-5515) provides freedom of choice to the authorizing individual as to how the form is used. There may be multiple active consents on file at any one time. The individual may choose:
   1. To share their information with specific individuals or organizations.
   2. To share their information with organizations that facilitate the electronic exchange of information.
   3. To share their information with all their past, current and future treating providers.

4. A specific timeframe for which the form applies. If no timeframe or specific event is indicated, the form is good for one year from client signature and must be renewed thereafter.
5. To revoke the consent at any time either verbally or in writing.

C. The Consent to Share Behavioral Health Information form must not be used for a release of information from any person or agency that provide services under the Victims of Crime Act, Violence Against Women Act, or Family Violence Prevention and Services Act. The services include domestic violence, sexual assault or stalking. A separate consent form must be completed with the person or agency that provided those services. Guidance in this area must be obtained through either the Privacy Officer, the Office of Recipient Rights, medical records staff, in consultation with clinician and/or clinical supervisor.

D. A minor's signature shall be accepted for release of information without parental/ guardian knowledge or consent when the minor is emancipated with supporting documentation provided.

E. In the case of death, the next of kin (if appointed personal representative of the estate) or executor of the estate with letters of authority may sign a limited release with proof of death and proof of executor appointment. The limited release is for purposes of applying for and receiving benefits. Order of preference for next of kin is as follows:
1. Spouse
2. Child over 18 years of age
3. Natural parent
4. Brother or sister over 18 years of age.
5. A blood relative over 18 years of age
6. A relative by marriage over 18 years of age

XI. Revocation/Withdrawal of Authorization/Consent

A. An individual may withdraw his/her consent verbally or in writing.

B. If the individual withdraws consent in writing, a copy of the completed withdrawal (preferably completion of Section 5 of the Consent to Share Behavioral Health Information) must be filed in the individual's record and a copy provided to the individual.

C. If an individual withdraws the consent verbally, the provider must document the time, place, and manner of the withdrawal in the individuals record under "Verbal Withdrawal of Consent" on the MDHHS-5515 form and provide a copy to the individual. A verbal withdrawal can be made only by the individual and not an individual's legal representative.

D. In the event that consent is withdrawn for one or more parties listed on the MDHHS-5515 form, the document is legally null and void. A new MDHHS-5515 form must be completed.

E. It is the individual's responsibility to notify all providers and organizations listed on the form that consent has been withdrawn, and providers are encouraged to assist the individual with this notification.

F. The revocation becomes effective upon receipt by OnPoint.

XII. Minimum Necessary Standard

The Privacy Rule generally requires covered entities to take reasonable steps to limit the use or disclosure of, and requests for, protected health information to the minimum necessary to accomplish the intended purpose. The minimum necessary standard does not apply to the following:

A. Disclosures to or requests by a health care provider for treatment purposes.

B. Disclosures to the individual who is the subject of the information.

C. Uses or disclosures made pursuant to an individual's authorization.

D. Uses or disclosures required for compliance with the Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification Rules.

E. Disclosures to the Department of Health and Human Services (HHS) when disclosure of information

is required under the Privacy Rule for enforcement purposes.

F. Uses or disclosures that are required by other law.

XIII. Recipient Request to Access, Inspect, Amend and/or Receive Photocopy of Case Record

A. General Information on Client Requests

1. For record entries made subsequent to March 28, 1996, confidential information in the recipient's record shall be disclosed to the adult recipient, upon his/her request, if the recipient does not have a guardian and has not been adjudicated legally incompetent.
2. Response to requests are done as expeditiously as possible, and typically no later than 30 days of the request or prior to release from treatment. In extenuating circumstances, OnPoint may request a one-time, 30-day extension to comply with the request. If an extension is requested, OnPoint will provide a written explanation to the individual and will include the date by which the request will be completed.
3. The Chief Operating Officer or designee shall review the request and make a determination within 3 business days if the record is maintained on site or 10 business days if the record is maintained off site whether any part of the requested disclosure would be detrimental. Written notification of the determination of detriment and justification for that determination shall be provided to the requestor.
4. The keeper of the record shall not decline to disclose information if a recipient or other legally empowered representative has consented, except when a determination of detriment has been made. If the keeper of the record or designee declines to disclose based on a determination of detriment, there shall be a determination as to what parts of the information can be released without detriment.
5. A recipient request will be documented (assistance will be provided as requested and needed). The documentation will be filed in the record of the recipient.

B. Request To Access and Inspect the Record

1. The completed Request to Inspect and/or Receive Copies of Clinical Record form must be presented to OnPoint, indicating the desire to view the records.
2. The receiver of the request will inform the Chief Operating Officer or designee of the request.
3. The Chief Operating Officer will determine any information that should not be viewed in accordance with F.1.c. and d of this policy)
4. The Chief Operating Officer will establish a time to review the file with the recipient/guardian. If the recipient/guardian requests that the primary worker, Privacy Officer, or other staff be present, this will be accommodated.

C. Request to Amend the Case Record

1. A written request for amendment must be made to OnPoint.
2. The receiver of the request will inform the Chief Operating Officer or designee of the request.
3. The request to amend may challenge the accuracy, completeness, timeliness, or relevance of the factual information in the record. The recipient will be permitted to insert into the record a statement correcting or amending the information at issue. The statement will become part of the record.

D. Request for Photocopy from the Case Record

1. Recipients and/or guardians are routinely provided with a copy of their Person-Centered Plan without making a special request.
2. For additional requests, the Request to Inspect and/or Receive Copies of Clinical Record form (assistance will be provided if needed) must be completed and presented to OnPoint, indicating the desire to obtain a copy of the record.
3. The receiver of the request will inform the Chief Operating Officer of the request.
4. The Chief Operating Officer will determine any information that should not be copied in

accordance with the above F.1.c.

5. An appointment time for the review will be scheduled within a reasonable time not to exceed 10 working days.
6. A member of the clerical support staff will access the client's records, make the requested copies, and prepare the envelope for mailing.
7. The clerical support staff will enter a record into the "Disclosures/Requests" tab in the EMR indicating what was copied, to whom, and on what date the information was released.
8. Requests to obtain copies from the case records will be handled as expediently as possible but will not exceed 30 days from the date the request was received.

XIV. Requests for Photocopies of Records from Non-clients

A. There will be no charge for records provided to health care providers for continued care and treatment.
B. There will be no charge to Federal agencies (unless a voucher is provided for a fee payment), Social Service Agencies, Medicare, Medicaid, insurance carriers, attorney representing the agency, the agency's insurance carrier, probation department, welfare department and schools.
C. Charges for other authorized and permitted requests for records will follow the policy #906 Freedom of Information Act (FOIA)

XV. Recipient Request for Alternative Communication or Location of Confidential Communication

A. OnPoint recipients/guardians have the right to request confidential communication of their PHI by alternative means or at alternative locations. OnPoint must accommodate all reasonable requests.
B. Recipients, legal guardians, parents for recipients under the age of 18 and legally authorized representatives may choose to communicate with OnPoint via electronic means i.e., email or text message. In these cases, the OnPoint Electronic and Special Communication Informed Consent form must be completed.
C. Examples of types of communications to which this policy may apply include:
    1. Mailing or telephoning regarding appointment reminders.
    2. Mailing bills or statements of payments due
    3. Treatment/procedure calls
    4. Sending test results
    5. Prescription refill reminders
D. If OnPoint is not able to meet the request for confidential communication, the client's request for confidential communication must be documented within the client's EMR.
E. Once designated, alternate means of communication should remain in effect until the client informs OnPoint otherwise; however, in certain limited circumstances and with the prior consent to the Privacy Officer or his/her designee, OnPoint may contact a client for treatment, payment, and/or health care operations purposes at an address or via a means that differs from the means/method initially agreed to by OnPoint.

XVI. Request for Restriction of Access to Electronic Medical Record

A. While all OnPoint staff must adhere to confidentiality requirements, OnPoint will consider extra precautionary measures when reasonable requests are made. It is recognized, however, that routine business practices must still occur. Therefore, it is not possible to deny complete access to key departments (e.g., Access/Crisis, IT, Finance/Reimbursement, Recipient Rights, Customer Services, Corporate Compliance). If a specific staff within a department(s) is denied, the supervisor within that department will identify an alternate staff to cover needed responsibilities.
B. To make a request for the restriction of access to Electronic Medical Record (EMR) records:
    1. The staff or recipient will be asked to complete the "Request for Denial to Electronic Medical

Records" form. The request will indicate whether the request is for partial or total restriction.

2. The form will be completed and submitted to the Corporate Compliance Officer. The Compliance Officer will promptly determine if the request can be met, while considering the relationship of the recipient/staff and any other presented information.
3. Notification will be made to key staff, including EHR Support who will block access. Other staff will be notified as appropriate.

XVII. Accounting of Disclosures of Protected Health Information (PHI)/Disclosure Log [45 CFR 164.528]

A. A disclosure log will be kept of all disclosures made without authorization except for disclosures:
   1. To carry out treatment, payment, and health care operations as provided .
   2. To individuals of PHI about them.
   3. Incident to a use or disclosure otherwise permitted or required by HIPAA .
   4. Pursuant to an authorization in accordance with HIPPA.
   5. That occurred prior to the compliance date for the covered entity.
   6. For the facility's director or to persons involved in the individual's care or other notification purposes.
   7. For national security or intelligence purposes.
   8. To correctional institutions or law enforcement officials.
   9. As part of a limited data set per HIPAA.

B. An individual may request an accounting of disclosures of PHI that occurred during the six years, or less, prior to the request for mental health records and three years, or less, prior to request for SUD records.

C. The Accounting of Disclosure/Disclosure Log will be maintained in the Electronic Health Record (EHR).

D. The Covered Entity must temporarily suspend and individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, as provided in 164.512(d) or (f), respectively, for the time specified by such agency or official, they provide the covered entity with a written statemen that such an accounting to the individual would be reasonable likely to impede the agency's activities and specifying the time for which such a suspension is required.

E. The Disclosure Log must include:
   1. The date of the disclosure.
   2. The name of the entity or person who received the PHI and if known, the address of such entity or person.
   3. A brief description of the PHI disclosed.
   4. A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for disclosure under 164.502(a)92)9ii) or 164.512, if any.
   5. For additional guidance on accounting of disclosures for multiple disclosures to the same person or entity, disclosures for a particular research purpose see 45 CFR 164.528.
   6. The titles of persons or offices responsible for receiving and processing requests for an accounting must be included with the accounting.

F. The Covered Entity must act on the individual's request for an accounting, no later than 60 days after receipt of such a request by either providing the accounting of disclosures or if unable to provide the accounting within the required time frame, may extend the time b no more than 30 days provided a written statement of reason for the delay is provided to the individual.

G. The first accounting in a 12-month period is provided free of charge. A reasonable cost-based fee for each subsequent request by the same individual within the 12-month period is allowed provided the individual is notified of the fee in advance.

XVIII. Ownership of Client Records

The original record (media, paper & ink) is the property of OnPoint. The information contained in the client's record belongs to the individual. In Michigan, behavioral health and substance use records are owned by individuals who create them - service recipients - under both federal and state privacy laws. This means that while providers, agencies, and systems may manage, store, safeguard, and share these records, the legal ownership and control remain with the individual.

XIX. Sequestering of Records

Records will be sequestered when appropriate as directed by the Director of Recipient Rights, Compliance Officer, or the CEO. This will result in increased security in the event of any legal action against OnPoint, instances where internal investigations are occurring, or other reasons where sequestering appears appropriate. Enhanced security of case records will occur when in conjunction with a death review completed by the Recipient Rights Officer. See Recipient Rights policy #1308 for further information.

XX. Peer Review

The records, data, and knowledge collected for, or by, individuals or committees assigned a peer review function including the review function under Section 143a (1) of the MHC are confidential, used only for the purpose of peer review, not public records, and are not subject to court subpoena.

REFERENCE(S)

- Public Act 258 of 1974 (Michigan Mental Health Code) supplemented through Act 152 of 1996. Sections 1746, 1748, and 1749
- 42CFR, Part 160 and 164
- Michigan Medical Record Confidentiality, 1998
- 42CFR Part 2
- 45CFR 164.502(g)(4)
- Federal Social Security Number Protection Act of 2010
- Michigan Social Security Number Privacy Act, MCL 445 of 2004
- Michigan Public Act 129 of 2014
- Michigan Public Act 559 of 2016
- For more information on 5515, the Standard Consent Form, visit www.michigan.gov/bhconsent
- 900.4 Compliance Related Definitions and Terms at the link above
- 907.1 MDHHS 5515 Consent to Share Behavioral Health Information for Care Coordination Purposes
- 912 Responding to Government Investigations, Subpoenas, Court Orders, Warrants