

MENTAL HEALTH CODE (EXCERPT)
Act 258 of 1974

***** 330.1748.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 10, 2017 *****

330.1748.amended Confidentiality.

Sec. 748. (1) Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and is not open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in this section or section 748a.

(2) If information made confidential by this section is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought. When practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.

(3) An individual receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.

(4) For case record entries made subsequent to March 28, 1996, information made confidential by this section shall be disclosed to an adult recipient, upon the recipient's request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. The holder of the record shall comply with the adult recipient'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.

(5) Except as otherwise provided in this section or section 748a, when requested, information made confidential by this section shall be disclosed only under 1 or more of the following circumstances:

(a) Under an order or a subpoena of a court of record or a subpoena of the legislature, unless the information is privileged by law.

(b) To a prosecuting attorney as necessary for the prosecuting attorney to participate in a proceeding governed by this act.

(c) To an attorney for the recipient, with the consent of the recipient, the recipient's guardian with authority to consent, or the parent with legal and physical custody of a minor recipient.

(d) If necessary in order to comply with another provision of law.

(e) To the department if the information is necessary in order for the department to discharge a responsibility placed upon it by law.

(f) To the office of the auditor general if the information is necessary for that office to discharge its constitutional responsibility.

(g) To a surviving spouse of the recipient or, if there is no surviving spouse, to the individual or individuals most closely related to the deceased recipient within the third degree of consanguinity as defined in civil law, for the purpose of applying for and receiving benefits.

(6) Except as otherwise provided in subsection (4), if consent is obtained from the recipient, the recipient's guardian with authority to consent, the parent with legal custody of a minor recipient, or the court-appointed personal representative or executor of the estate of a deceased recipient, information made confidential by this section may be disclosed to all of the following:

(a) A provider of mental health services to the recipient.

(b) The recipient or his or her guardian or the parent of a minor recipient or another individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others.

(7) Information may be disclosed by the holder of the record under 1 or more of the following circumstances:

(a) As necessary in order for the recipient to apply for or receive benefits.

(b) As necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the health insurance portability and accountability act of 1996, Public Law 104-191.

(c) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation. The individual who is the subject of the information shall not be identified in the disclosed information unless the identification is essential in order to achieve the purpose for which the information is sought or if preventing the identification would clearly be impractical, but not if the subject of the information is likely to be harmed by the identification.

(d) To a provider of mental or other health services 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.

(8) If required by federal law, the department or a community mental health services program or licensed facility shall grant a representative of the protection and advocacy system designated by the governor in compliance with section 931 access to the records of all of the following:

(a) A recipient, if the recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal and physical custody of the recipient has consented to the access.

(b) 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.

(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 all of 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 representative has failed or refused to act on behalf of the recipient.

(9) 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), are confidential, shall be used only for the purposes of peer review, are not public records, and are not subject to court subpoena. This subsection does not prevent disclosure of individual case records under this section.

(10) The holder of an individual's record, if authorized to release information for clinical purposes by the individual or the individual's guardian or a parent of a minor, shall release a copy of the entire medical and clinical record to the provider of mental health services.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1982, Act 236, Imd. Eff. Sept. 22, 1982;—Am. 1986, Act 50, Imd. Eff. Mar. 17, 1986;—Am. 1987, Act 192, Imd. Eff. Dec. 2, 1987;—Am. 1990, Act 167, Imd. Eff. July 2, 1990;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 1996, Act 588, Imd. Eff. Jan. 21, 1997;—Am. 1998, Act 497, Eff. Mar. 1, 1999;—Am. 2016, Act 559, Eff. Apr. 10, 2017.