

Releasing or Sharing of Substance Use Disorder (*including Alcohol Use Disorder*) records for Adults in Michigan

If an individual adult requests **either** 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 applies:

- a. The individual has a legal guardian
- b. The individual has been deemed legally incompetent

Any Protected Health Information (PHI) relating to the treatment of a substance use disorder (SUD), *which includes Alcohol Use Disorder (AUD) records*, are classified as Mental Health records. The release of any Mental Health Records (SUD, AUD, or psychotherapy notes) is subject to specific consent requirements before release, pursuant to the Michigan Mental Health Code and Federal Privacy Laws.

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. A medical emergency
- b. Specific court orders (i.e., to determine if an individual is under treatment)
- c. Mandatory reporting (i.e., elder 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

** <https://www.michigan.gov/mdhhs/keep-mi-healthy/mentalhealth/behavioral/consent/michigan-behavioral-health-standard-consent-form>

Federal Law -Title 42 CFR Part 2 rules state that individuals must consent before releasing any mental health records. There are few instances when mental health records can be released without an individual's consent.

Chapter 2A of the Michigan Mental Health Code (§330.1263) states that consent is necessary unless the disclosure falls under the seven scenarios outlined above.

Example: If patient John Doe's medical records are requested, you will first need to determine whether or not there is any mention of SUD in his medical history. For instance, Mr. Doe's visit on January 1, 2020, is for treatment for his uncontrolled blood sugar. During that visit, there's documentation in the encounter that he requested a refill of his Antabuse, the medication used to treat his Alcohol Use Disorder. Because there's documentation of an AUD diagnosis, you must stop and refer to Title 42 CFR Part 2 of the federal law on the PHI and security of SUD records. In Michigan, the Michigan Mental Health Code, as it relates to SUD, offers an individual even more protection than the federal laws, Title 42 CFR Part 2, and HIPAA.

Mr. Doe can and must authorize sharing his record for his diabetic check-up, including the mention of his Alcohol Use Disorder and subsequent Antabuse refill. However, since the medical record contains a SUD diagnosis, those chart notes are now mental health records. The consent must spell out precisely what he's allowing to be shared, to whom it's shared, and for how long the authorization is valid. If Mr. Doe does not consent for his SUD information to be shared, you can still share the rest of the medical record with the SUD information redacted.

**** Also, Important to Know** -The current SUD PHI rules **also apply to the records for "treatment purposes,"** so releasing SUD PHI to another provider is **not** allowed without **prior consent**. Per the Federal Privacy Rule, the release of records for "treatment" purposes 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.

Information gathered from; <https://www.michigan.gov/mdhhs/assistance-programs/healthcare/hipaa/phi-consent-tool>