

Recipient Rights Under the Michigan Mental Health Code/HIPAA: A “Conflicts” Analysis

<u>HIPAA Rights</u>	<u>Mental Health Code Recipient Rights</u>	<u>Conflict?</u>	<u>Which Law Applies</u>	<u>Reasoning</u>
<p>Access to PHI by Patient: Inspections of records and the provision for copies of PHI about the individual in a designated record set, for as long as the PHI is maintained in the designated record set, <i>except psychotherapy notes</i> [45 CFR § 164.524].</p>	<p>Confidentiality. 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. MCL 330.1748(4)</p>	<p>Under HIPAA, in the majority of cases, covered entities must accommodate a request or provide a process of denial, subject to review. Under the Mental Health Code, all licensed health professionals must comply, unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others. MCL 330.1748(6)(b)</p>	<p>The Mental Health Code.</p>	<p>Because the Mental Health Code provides more access, it is a more stringent standard and therefore, covered entities would need to disclose psychotherapy notes to the recipient upon request.</p>
<p>Psychotherapy Notes: 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 separated from the rest of the individual's record." <i>Psychotherapy notes</i> excludes "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."</p>	<p>Privileged Communications: means a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, 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. MCL 330.1700</p>	<p>HIPAA and the Mental Health appear to be defining similar records, except the Mental Health Code does not require a physical separation of these communications.</p>	<p>It is not completely clear under the Mental Health Code that a recipient is entitled to access to psychotherapy notes or privileged communications, if they are kept separate from the medical record.</p>	<p>If psychotherapy notes are kept separate from the medical record, then HIPAA may provide better guidance on a recipient's access to "privileged communications."</p>

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<p>Request amendments to PHI. Individuals can request that covered entities amend PHI about the individual in a designated record set for as long as the PHI is maintained in a designated record set. If the covered entity agrees to the amendment, it must 1) identify the records affected; 2) append or provide a link to the amendment; 3) inform the individual the amendment has been made; and 4) work with other covered entities or business associates who possess or receive the data to make the amendments [45 CFR § 164.526]. If the covered entity denies this request, the Privacy Rule provides a process for contesting the denial [45 CFR § 164.526].</p>	<p>Statement correcting or amending information. A recipient, guardian, or parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record. The recipient, guardian, or parent of a minor recipient shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become part of the record. MCL 330.1748</p>	<p>No Conflict.</p>	<p>A covered entity will need to comply with both provisions.</p>	<p>HIPAA spells out the process in a little more detail and requires that the information received by a business associate also be corrected.</p>
<p>Receive adequate notice. With limited exceptions, individuals have the right to receive a notice of the uses and disclosures the covered entity will make of their PHI, their rights under the Privacy Rule, and the covered entity's obligations with respect to that information. The notice must be in plain language (e.g., "your health information may be shared with public health authorities for public health purposes . . .") and posted where it is likely to be seen by patients [45 CFR § 164.520].</p>	<p>Notice of Rights. Except as provided in section 707, applicants for and recipients of mental health services and in the case of minors, the applicant's or recipient's parent or guardian, shall be notified by the providers of those services of the rights guaranteed by this chapter. Notice shall be accomplished by providing an accurate summary of Chapter 7 and chapter 7a to the applicant or recipient at the time services are first requested and by having a complete copy of Chapter 7 and Chapter 7a readily available for review by applicants and recipients.</p>	<p>No Conflict. Covered Entities will need to comply with both notice provisions.</p>	<p>A covered entity will need to comply with both provisions.</p>	<p>The recipient of mental health services is entitled to notice of rights under both the MHC and HIPAA.</p>

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<p>Receive an accounting of disclosures. Upon request, covered entities are required to provide individuals with an accounting for certain types of disclosures of PHI, although the rule contains certain exceptions, including disclosures with individual authorization, disclosures related to providers' treatment, payment and health-care operations (TPO), and other exceptions. A typical accounting includes:</p> <ul style="list-style-type: none"> • the name of the person or entity who received the information • date of the disclosure • a brief description of the information disclosed, and • a brief explanation of the reasons for disclosure or copy of the request [45 CFR § 164.528]. <p>However, requirements for accounting of public health disclosures may vary (see Accounting for Public Health Disclosures).</p>	<p>Record of Disclosures. The Michigan Administrative Code requires: A record shall be kept of disclosures and shall include all of the following information:</p> <ul style="list-style-type: none"> • The information released. • To whom the information is released. (c) The purpose claimed by the person for requesting the information and a statement disclosing how the disclosed information is germane to the purpose. (d) The subsection of section 748 of the act, or other state law, under which a disclosure was made. • A statement that the receiver of disclosed information was informed that further disclosure shall be consistent with the authorized purpose for which the information was released. <p>[Source: Michigan Administrative Rule 330.7051; History: 1979 AC; 1981 AACS; 1986 AACS; 1990 AACS; 1998 AACS.]</p>	<p>No Conflict. Both provisions need to be complied with by Covered Entities. Mental Health licensees who are not Covered Entities under HIPAA still need to comply with the Michigan regulation.</p>	<p>Both.</p>	<p>Covered Entities must comply with both HIPAA and the Michigan regulation.</p>
<p>Request restrictions. Individuals have the right to request a restriction on certain uses or disclosures of their PHI; however, the covered entity is not obligated to agree to such a request. If the covered entity does agree to a restriction, it must generally abide by the agreement, except for emergency treatment situations. But such an agreement is not effective to prevent certain permitted uses or disclosures [CFR 45 § 164.512]</p>	<p>No parallel provision in the Mental Health Code</p>	<p>No direct Conflict because the Covered Entity is not required to comply with the request.</p>	<p>HIPAA if the health care provider agrees to the requested restriction.</p>	<p>However, if the recipient requests that his or her psychotherapy notes be “restricted” then the covered entity would follow the Mental Health Code regardless of whether the request was agreed to.</p>