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| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |
| WRITTEN BY Lisa K. Jolly, B.S. Recipient Rights Officer | REVISED BY Lisa K. Jolly, B.S. Recipient Rights Officer | AUTHORIZED BY Brooke Sankiewicz, LMSW, CADC, CEO | |

APPLICATION:

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| <input checked="" type="checkbox"/> CMH Staff | <input checked="" type="checkbox"/> Board Members | <input checked="" type="checkbox"/> Provider Network | <input checked="" type="checkbox"/> Employment Services Providers |
| <input checked="" type="checkbox"/> Employment Services Provider Agencies | <input checked="" type="checkbox"/> Independent Contractors | <input checked="" type="checkbox"/> Students | <input checked="" type="checkbox"/> Interns |
| <input checked="" type="checkbox"/> Volunteers | <input checked="" type="checkbox"/> Persons Served | | |

POLICY:

Lapeer County Community Mental Health (LCCMH) protects and keeps confidential the identity of persons served and information obtained in the course of receiving services.

STANDARDS:

INTERNAL CONFIDENTIALITY:

Only those LCCMH staff members with a bona fide need to know will be allowed access to person served information. Authorized LCCMH staff members consist of those staff providing direct care for persons served and staff collecting or disseminating information relevant to department activities. All records active or inactive will be kept in a secure location and will only be accessible to authorized LCCMH staff members based on assigned work programs. No consent is required for internal access by authorized staff.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

MANDATORY DISCLOSURES:

- A. All disclosures will be consistent with Sections 748 and 750 of the Michigan Mental Health Code and agency standards. When requested, confidential information will be disclosed only under one or more of the following circumstances:
1. An order or a subpoena of a court of record or a subpoena of legislature for non-privileged information; unless the information is privileged by law.
 2. To a prosecuting attorney as necessary for their office to participate in a proceeding governed by the Michigan Mental Health Code.
 3. To the attorney of the person served with consent of the person served, the guardian of the person served with authority to consent, or the parent with legal and physical custody of a minor person served.
 4. To the office of the Auditor General if the information is necessary for the office to discharge its constitutional responsibility.
 5. When necessary to comply with another provision law.
 6. To the Department of Health and Human Services when necessary in order for the Department to discharge a responsibility placed upon it by law.
 7. To a surviving spouse of the person served or, if there is no surviving spouse, to the individual or individuals most closely related to the deceased person served within the third degree of kinship (relatedness) as defined in civil law, for the purpose of applying for and receiving benefits, but only if spouse or closest relative has been designated the personal representative or has a court order.
- B. For case records made subsequent to March 28, 1996, information made confidential by Section 748 of the Michigan Mental Health Code will be disclosed to an adult person served, upon the request of the person served, if the person served does not have a guardian and has not been adjudicated legally incompetent. The holder of the record will comply with the request for disclosure of the adult person served as expeditiously as possible but in no event later than the earlier of 30 days after receipt of the request or if the person served is receiving

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

treatment from the holder of the record, before the person served is released from treatment.

DISCRETIONARY DISCLOSURES:

- A. If informed consent is obtained from the person served, the guardian of the person served with authority to consent, the parent with legal custody of a minor person served, or the court-appointed personal representative or executor of the estate of a deceased person served, confidential information may be disclosed to providers of mental health services or to the person served or the guardian of a minor person served or any other individual or agency unless in the written judgment of the holder, the disclosure would be detrimental to the person served or others.
- B. To enhance treatment, persons served may be requested to authorize disclosure of information to family members, significant others, or other agencies providing services to the person served; such consent is voluntary.
- C. When information is disclosed for clinical purposes and with appropriate consent from the person served or the guardian of the person served, or parent of a minor person served, the holder of the record will release a copy of the entire medical and clinical record to the provider of mental health services.
- D. Information may be disclosed at the discretion of the holder of the record without the consent of the person served only in the following conditions:
 - 1. As necessary in order for the person served to apply for or receive benefits without the consent of the person served or legally authorized representative only if the benefits will accrue to the provider or will be subject to collection for liability for mental health services.
 - 2. As necessary for the purpose of outside research, evaluation, accreditation or statistical compilation. The individual who is the subject of the information will 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 be harmed by the identification.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

3. 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 person served or other individuals.
4. To the Michigan Department of Health and Human Services (MDHHS) caseworker or administrator directly involved in a child or adult abuse or neglect investigation. Upon receipt of notification and request, the LCCMH staff member will review all mental health records and information in the professional's possession to determine if there are mental health records or information pertinent to the investigation and give the information to the MDHHS Protective Services caseworker or administrator within 14 days after receipt of the request. A Release of Information is NOT required if MDHHS has an OPEN investigation of child or adult abuse and / or neglect. The LCCMH staff member can release confidential information regarding the parent, sibling, or person served to the MDHHS worker. If the parent or sibling is open for services and confidential information in their record is pertinent to the investigation that information can be released WITHOUT a release as long as MDHHS has an OPEN investigation. Best practice is to get the request in writing from the MDHHS worker but a verbal request is also acceptable as long as the LCCMH worker confirms an Investigation is OPEN. Once the investigation is closed the LCCMH worker will ensure a release is signed before releasing any additional information.
5. Information will be shared as necessary for treatment, coordination of care, or payment for delivery of Mental Health Services in accordance with the Health Insurance Portability Accountability Act of 1996 (HIPAA).
 - a. A signed release of information must be on file prior to LCCMH sending the entire record to another agency or CMH.
 - b. In an emergency situation, LCCMH may share the face sheet from the electronic health record and insurance information with ambulance personnel or emergency room or urgent care staff to assist with immediate medical or psychological treatment needs.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

DISCLOSURES-- DETERMINATION OF DETRIMENT (Delay of requested information):

- A. The holder of the record may delay releasing information if there is a substantial and documented reason to believe disclosure would be detrimental to the person served or to others. The following procedures will be followed:
1. Within three business days if the record is on site, or within ten business days if the record is off site, the Chief Executive Officer (CEO) will review a request for information that has been delayed and make a determination whether the disclosure would be detrimental to the person served or others [AR 7051(3)].
 2. Upon refusing to disclose information because of possible detriment to the person served or to others, the CEO will determine whether part of the information can be released without detriment. A determination of detriment will not be made if the benefit to the person served from the disclosure outweighs the detriment [AR 7051(3)].
 3. A decision not to disclose may be appealed to the Recipient Rights Officer having jurisdiction by the person seeking disclosure [MHC 748 (6)], [AR 7051 (3)].
- B. A person served, a legally-empowered guardian or parents of a minor, may request information not be released or decline to consent. Information will be disclosed to the attorney of a person served if the person served has consented, despite a request of a legally-empowered guardian or parents of a minor that the information not be released.

DISCLOSURES -- Disability Rights Michigan (DRM):

An identified representative of DRM will be granted access to records in accordance with federal law under the following circumstances:

- A. A person served, the guardian of the person served with authority to consent, or a parent of a minor person served with legal and physical custody of the person served has consented to the access.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

- B. A person served, including any who have died or whose whereabouts are unknown, if all of the following apply:
1. Because of mental or physical condition, the person served is unable to consent to access.
 2. The person served does not have a guardian or other legal representative, or the guardian of the person served is the State.
 3. The DRM has received a complaint on behalf of the person served or has probable cause to believe, based on monitoring or other evidence, the person served has been subject to abuse or neglect.
- C. A person served who has a guardian or other legal representative, if all of the following apply:
1. A complaint has been received by the DRM or there is probable cause to believe the health or safety of the person served is in serious and immediate jeopardy.
 2. Upon receipt of the name and address of the legal representative of the person served, the DRM has contacted the representative and offered assistance in resolving the situation.
 3. The representative has failed or refused to act on behalf of the person served.

DISCLOSURES -- PRIVILEGED COMMUNICATION:

Privileged communication will not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the person served has waived the privilege, except in circumstances set forth in Section 750 of the Michigan Mental Health Code.

DISCLOSURE REGARDING PROVIDING INFORMATION TO ATTORNEYS OTHER THAN PROSECUTING ATTORNEYS:

- A. An attorney who is retained or appointed by a court to represent a person served and who presents identification and a valid consent or release by the person

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

served, guardian, or by the parent of a minor child will be permitted to review, at LCCMH, the record of the person served.

- B. An attorney who does not represent a person served will not be allowed to review records, unless the attorney presents a certified copy of a court order directing disclosure of information concerning the person served to the attorney.
- C. An attorney will be refused written or telephoned requests for information, unless the request is accompanied or preceded by a certified copy of an order from a court ordering disclosure of information to the attorney or unless a consent or release has been appropriately executed.
- D. The attorney will be advised of the procedures for reviewing and obtaining copies of records of the persons served.
- E. An attorney who has been retained or appointed to represent a minor pursuant to an objection to hospitalization of a minor will be allowed to review records.

PROVIDING INFORMATION TO PRIVATE PHYSICIANS OR PSYCHOLOGISTS:

Information will be provided to private physicians or psychologists appointed or retained to testify in civil, criminal, or administrative proceedings as follows:

- A. A private physician or psychologist who presents identification and a certified true copy of a court order appointing the physician or psychologist to examine a person served for the purpose of diagnosing the present condition, will be permitted to review a record containing information concerning the person served at LCCMH. Physicians or psychologists will be notified before the review of records when the records contain privileged communication and what cannot be disclosed in court under privileged communications.
- B. The court or other entity issuing a subpoena or order, and the Attorney General's office, when involved, will be informed if subpoenaed or ordered information is privileged under a provision of law. Privileged information will not be disclosed unless disclosure is permitted because of an express waiver of privilege or because of other conditions permitting or requiring disclosure, by law.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

PROVIDING INFORMATION TO A PROSECUTING ATTORNEY:

A prosecutor may be given non-privileged information or privileged information, which may be disclosed, pursuant to Section 750 (2) of the Michigan Mental Health Code if it contains:

- A. Information relating to the names of witnesses to acts which support the criteria for involuntary admission.
- B. Information relevant to alternatives to admissions to a hospital or facility.
- C. Other information designated in LCCMH policies.

DISCLOSURE OF INFORMATION REGARDING MINORS:

- A. A minor fourteen (14) years of age or older may request and receive mental health services and a mental health professional may provide mental health services on an outpatient basis, excluding pregnancy termination referral services and the use of psychotropic drugs, without the consent or knowledge of the minor's parent, guardian or person in loco parentis.
 - 1. Except as otherwise provided in this section, the minor's parent, guardian or person in loco parentis will not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines there is a compelling need for disclosure based on a substantial probability of harm to the minor or to another individual, and if the minor is notified of the mental health professional's intent to inform the minor's parent, guardian or person in loco parentis.
 - 2. Services provided to a minor under this section will be limited to not more than twelve (12) sessions or four (4) months per request for services, whichever comes first. After the twelfth session or fourth month of services, the mental health professional will terminate the services or, with the consent of the minor, notify the parent, guardian, or person in loco parentis to obtain consent to provide further outpatient services. The Mental Health Code does not contain any exceptions to extend the time past the timeframe.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

B. The minor's parent, guardian, or person in loco parentis is not liable for the cost of services received by a minor under subsection 707 (1) of the Michigan Mental Health Code.

1. A minor who is fourteen (14) years of age or older and who is seeking treatment under Section 707 of this act will be considered as the responsible party for the determination of ability to pay if the parents are not notified of treatment.
2. Once, however, the parent, guardian, or person in loco parentis is notified and signs the consent for treatment the agency will determine the responsible party's insurance coverage and ability to pay.

C. Services provided to a minor under section 707 of the Michigan Mental Health Code will, to the extents possible, promote the minor's relationship to the parent, guardian or person in loco parentis.

D. This section does not relieve the mental health professional from his or her duty to report suspected child abuse or neglect.

DISCLOSURES REGARDING 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 Michigan Mental Health Code are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoenas.

SOCIAL MEDIA GUIDELINES:

Programs can have Social Media Platforms including but not limited to Tik Tok, Facebook, Twitter, Instagram, or YouTube with consent and abiding with the following guidelines:

- A. Consent of the person served, the guardian of the person served with authority to consent, or the parent with legal and physical custody of a minor person served.
- B. Consent must be in writing on Form #13 Consent to be Videotaped, Photographed, or Audiotaped or Interviewed.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

- C. Consent must be renewed on an annual basis. Programs should not post live videos on their Social Media Platforms in order to ensure persons served have consent prior to posting a video.
- D. Videos, pictures, interviews, or audio tapes are only to be filmed on an agency phone or camera. Taking pictures, videos, or audiotapes are PROHIBITED on staff's personal phones.
- E. Videos, pictures, interviews, or audio tapes CANNOT be posted on a staff's personal Social Media Platform. This will result in a Confidentiality breach and an investigation by the Recipient Rights Office and /or the Corporate Compliance Office.
- F. Videos, pictures, interviews, or audio tapes CANNOT include bullying, exploiting, abusing, demeaning, or making fun of a person served. If staff observe this type of behavior it should be reported to the Recipient Rights Officer and the Corporate Compliance Liaison.
- G. If staff observe any type of cyberbullying, exploitation or abuse by an outside source, it is to be reported to the Rights Officer and the Clinical Supervisor so it can be reported to the appropriate authorities.
- H. The person served, the guardian of the person served with authority to consent, or the parent with legal and physical custody of a minor person served can withdraw consent at any time with the understanding that pictures or video tapes may not be able to be deleted as they are already printed and/or on the internet. However, upon request, the video will be deleted from the Social Media Platform.

GENERAL GUIDELINES:

- A. Confidential information released by LCCMH Staff must have a signed Release of Information on record unless the information is required by one of the mandatory disclosures listed above.
- B. Substance Use Disorder Releases must specifically specify the release of substance use disorder records in accordance with 42CFR Part 2. Staff will use the approved Consent to Share Behavioral Health Information from the Michigan Department of Health and Human Services (Form MDHHS-5515).

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

- C. Human Immuno-Deficiency Virus (HIV) related information cannot be released unless the person served specifically authorizes disclosure. The person served must sign a release of information containing the specific statement releasing HIV related information in the records before any information can be released according to MCL333.5131.
- D. Conversations with or about persons served will not be conducted in public places such as hallways, waiting areas, the reception desk, or other common areas within the work site or in any public places outside LCCMH.
- E. Data/information contained in the record of the person served will not leave the worksite without prior knowledge/approval from the immediate supervisor.
- F. In group therapy, clinicians will inform group members of the importance of keeping information and what is heard about other members of the group private. In addition, attendees will be given written rules and expectations which address the importance of confidentiality.
- G. Facsimiles: The fax number must be verified before sending clinical information and a confidentially statement must be included on the cover sheet. Faxed releases of information are acceptable and regarded as a properly executed release.
- H. Electronic mail: The e-mail address will be verified before e-mailing any information and a confidential statement must be included at the end of the e-mail. Staff should use #Confidential if they need to encrypt an e-mail being sent outside the agency. Anything sent within the Lapeer LCCMH domain should be sent through OASIS Secure Messaging.
- I. When in doubt if confidential information should be released, keep the information private until consultation with a supervisor or the Recipient Rights Officer.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

J. Information such as diagnosis, medication, and medical conditions may be disclosed to medical personnel in order to assist with treatment in an emergency situation.

PROCEDURES:

- A. All persons working at LCCMH will be given a copy of the confidentiality policy and required to sign a Confidentiality statement when they begin their employment. All employees will abide by the requirements set down in this policy and have an opportunity to ask questions or discuss the policy’s content with their supervisor or the Recipient Rights Officer. Breach of this policy will be cause for disciplinary action up to and including dismissal from employment.
- B. A summary of Section 748 of the Michigan Mental Health Code will be made part of the record for each person served.
- C. Disclosures:
 - 1. Staff who discloses clinical record information will ensure the identity of the individual and any other information is not disclosed unless it is essential to the purpose for which it was sought. In addition, individuals receiving information made confidential by the Michigan Mental Health Code will disclose information to others only to the extent consistent with the authorized purpose for which the information was obtained.
 - 2. If a Person Served requests documents from their record and the reports and or documentation is from a third party, for example from a hospital, a previous therapy center, and/or other treating agency, the person served is entitled to that information.
 - 3. The primary case holder identifies any “special circumstances” the person served does not want released. These may include SUD information, HIV information, psychotherapy notes, and/or privileged communications. Any questions regarding the special circumstances can be directed to the Recipient Rights Officer for clarification or assistance.
 - 4. LCCMH Medical Records Department verifies a signed consent form is on record for all information before releasing information to a third party.

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

5. LCCMH will keep a record of disclosures which will include the following information:
- a. Information released.
 - b. To whom it is released.
 - c. The purpose stated by the person requesting the information.
 - d. A statement indicating how the disclosed information is germane to the stated purpose.
 - e. The part of the law under which disclosure is made.
 - f. A statement that the persons receiving the disclosed information could only further disclose consistent with the authorized purpose for which it was released.
- D. A person served, guardian, a parent of a minor person served, after having gained access to treatment records in accordance with agency procedures, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the record of the person served and will be allowed to insert a statement into the record correcting or amending the information at issue without changing the original document. The statement will become part of the record.
- E. Protective Services Complaints will be kept in a separate locked file cabinet and/or password protected computer and not be made part of the clinical record. A copy will be provided to the Recipient Rights Officer and the CEO.
- F. Any subpoenas requiring attendance at a hearing or trial or to release confidential information will be given to the CEO and/or his designee for their review. The CEO will make a decision whether consultation with legal counsel is necessary. This includes any requests from law enforcement regarding any on-going investigations or search warrants. A subpoena does not have to be signed by a Judge. An attorney can sign a subpoena however; a release of information must be attached to the subpoena. If a subpoena is not properly served, for example faxed, e-mailed, regular mail, or dropped off the LCCMH worker should

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

follow up with the company or party that sent the subpoena and should never ignore a subpoena.

- G. LCCMH employees and contract providers should not be “friends” with a person served, their family, and/or their guardian on social media sites. If an employee is a “friend” of a person who is receiving services prior to their employment they should inform their supervisor. Exceptions to this policy for family members receiving services or other similar circumstances should be reviewed by the Recipient Rights Officer and the Supervisor assigned to the employee or contract provider.
- H. If a LCCMH employee or contract provider knows a person served or is friends with a person served, the employee or contract provider should under no circumstances enter the electronic record of the person served. If an employee mistakenly enters the chart through the course of their job responsibilities, the staff member must report it to their supervisor, the Rights Officer, and the Corporate Compliance Officer.
- I. The following rates will be used for any duplication related requests:
 1. There will be NO charge for the FIRST COPY if a person served requests a copy of their BPS (Bio-psycho-social), the initial psychiatric evaluation, medication review notes, or progress notes. If they request an additional copy after the first copy has been provided to them, then all fees will be applied. This does not include requests from outside agencies; all rates will apply for those requests.
 2. There will be a flat fee of \$ 15.00 for all requests. If requests are processed via paper there will be a \$.20 fee for each page to cover staff labor and postage involved in the processing.
 3. The above rates will be waived if the record is sent directly to another health care provider or benefit-related provider related to service provision.
 4. Any requests for the wavier of the duplication charges due to financial hardship should be given to the CEO or CCO

| | | | |
|-----------------------------|---------------|--|---------------|
| CHAPTER Service Delivery | CHAPTER 02 | SECTION 002 | SUBJECT 60 |
| SECTION Records | | DESCRIPTION Confidentiality and Release of Persons Served Records/ /Subpoenas | |

DEFINITIONS:

Confidentiality: A quality of private information developed with the implicit or explicit promise or with the reasonable expectation, it will not be further disclosed except for the purpose for which it was provided.

Loco parentis: a person who is not the parent or guardian of a minor, but who has either legal custody or physical custody of a minor and is providing support and care for the minor.

Privilege: A legal protection against being forced to breach a promise or expectation of confidentiality in legal proceedings.

Psychotherapy Notes: Under HIPAA, psychotherapy notes are defined as “notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversation during a private counseling session.” These notes, which capture the clinician’s impressions about the patient, are NOT stored in the person served’s clinical record. Note that any Psychotherapy notes are kept in a secured area such as a locked file cabinet.

REFERENCES:

Michigan Mental Health Code (Chapter 7)
 Administrative Rules
 42CFR Part 2.
 45 CFR
 Child Protection Law
 Adult Protection Law
 Michigan Compiled Law (MCL) 333.5131.
 Form MDHHS-5515

LKJ:lr

 This policy supersedes
 #10/09038 dated 10/14/2009.
