



HURON BEHAVIORAL HEALTH  
**PROCEDURE**

Procedure #: RR 2.07  
Issue Date: 09/27/00  
Rev. Date: 08/07/18  
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**Title: Confidentiality and Disclosure of Information Procedure**

Prepared By: Recipient Rights Officer

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**Purpose:**

To define the process for protecting confidentiality and disclosing confidential consumer information.

**Scope:**

This procedure applies to all employees (including full-time employees, part-time employees, contractual providers, volunteers, students, and/or interns) of Huron Behavioral Health (HBH) and all consumers served by HBH.

**Information:**

- It is the policy of HBH, as related to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, that:
  - upon request, HBH must allow a consumer to inspect and/or obtain a copy his or her own medical records, billing records or other records used by HBH to make decisions about the consumer, and, further, the consumer has the right to request that his/her information be amended (see also "[Notification for Amended Health Records Procedure](#)" ORI.2.01)
  - HBH is fully committed to carrying out its services in a manner that is in full compliance to regulations set forth by the U.S. Department of Health and Human Services. This procedure is established to provide clear and defined processes for the release of Protected Health Information (PHI) when a HIPAA authorization is required
  - in certain special circumstances, uses and disclosures (for purposes outside of treatment, coordination of care, and payment) may be made without obtaining an authorization/release from the consumer
- Any reference to the word "confidential information" is to be interpreted as "*Protected Health Information*" (PHI).
- It is the policy of HBH that information in the record of the consumer, and other information acquired in the course of providing mental health services to a consumer, shall be kept confidential and shall not be open for public inspection. If confidential information 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 the disclosure was sought. HBH shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained. No other information should be disclosed unless it is germane to the authorized purpose for which the disclosure was sought. Records, reports, and correspondence containing consumer information are to be placed in secure/locked areas at the end of the business day.
- In accordance with Public Act 129 of 2014, HBH shall honor and make available the Michigan Department of Health and Human Services' (MDHHS's) standardized "Consent to Share Your Health Information" form ([MDHHS-5515](#)) which can be found on the MDHHS website @ [http://www.michigan.gov/mdhhs/0,5885,7-339-71550\\_2941\\_58005\\_70642---,00.html](http://www.michigan.gov/mdhhs/0,5885,7-339-71550_2941_58005_70642---,00.html) and also in the HBH I:\Forms folder.
- It is the policy of HBH that the preferred method of releasing information is in written form. Information may be released via telephone in the situation where the individual releasing the information can be reasonably sure that the individual receiving the information is who he/she says that they are.
- Any information being released via the fax machine will be routed through the Records Clerk. A fax cover page (form [90-094](#)), which includes a statement regarding confidentiality, will be used. A phone call to the recipient of the fax should be made prior to the fax being sent to assure someone will collect and appropriately disseminate the confidential information.
- HBH will accept photocopies of releases of information.
- Per section 330.1143a(2) of the Mental Health Code, the records data, and knowledge collected for or by individuals or committees assigned a review function including the review function are confidential and used only for the purpose of peer review, are not public records, and are not subject to court subpoena.
- Records that need to be transported to other agencies, courts, off site locations etc., must maintain the

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confidentiality of the record at all times during transport. Vehicles must be locked if paper or electronic records need to remain in the vehicle and records must be kept inconspicuous and out of view from others who do not have a need to know.

- If questions or concerns arise in regard to the release of confidential information, the HBH Recipient Rights Officer or Privacy Officer should be contacted for guidance.

**STANDARDS:**

1. For case record entries made subsequent to March 28, 1996, information made confidential shall be disclosed to an adult consumer, upon the consumer's request, if the consumer does not have a guardian and has not been adjudicated legally incompetent. HBH shall comply with the adult consumer's request for disclosure as expeditiously as possible but in no event later than the earlier of thirty (30) days after the receipt of the request or, if the recipient is receiving treatment from HBH, before the individual is released from treatment.
2. Parents, consumers, and family members may challenge the accuracy, completeness, timeliness, or relevance of information in the consumer's record. The consumer (or other empowered representative) will be allowed to insert into the record a statement correcting or amending the information at issue and the statement becomes part of the record (see also "[Notification Process for Amended Health Information Records Procedure](#)" [ORI.2.01](#)). If the record is accurate and complete and no changes are to be made, a written notice of the reason for denial of change will be given to the consumer in letter form that complies with the HIPAA requirements (see also form [90-102](#)).
3. The Executive Director (or designee) may make a determination that disclosing certain information may be detrimental to the consumer or others. If HBH declines to disclose information (except for case record entries made subsequent to March 28, 1996), because of possible detriment to the consumer or others, the Executive Director (or designee) shall determine whether part of the information may be released without detriment. A determination of detriment shall not be made if the benefit of the disclosure outweighs the detriment to the consumer. If the record of the consumer is located at the resident's facility, then the Executive Director (or designee) shall make a determination of detriment within three (3) business days from the date of the request. If the record of the consumer is located at another location, the Executive Director (or designee) shall make a determination of detriment with ten (10) business days from the date of the request. The Executive Director (or designee) shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information.
4. If a determination of detriment has been made and the person seeking the disclosure disagrees with that decision, he/she may file a recipient rights complaint with HBH office of Recipient Rights.
5. When authorized to release information for clinical purposes by the individual or the individual's guardian or a parent of a minor, a copy of the entire medical and clinical record is to be released to the provider of mental health services.
6. The consumer served may review his/her case record in the presence of a professional staff person of the organization on the organization's premises and such review is carried out in a manner that protects the confidentiality of the record.
7. Information contained in the consumer's case record may be disclosed by HBH under one (1) or more of the following circumstances:
  - a. As necessary in order for the consumer to apply for or receive benefits. (Note: HBH may disclose information that enables a consumer to apply for or receive benefits without the consent of the consumer or legally authorized representative only if the benefits shall accrue to HBH or be subject to collection for the liability of mental health services.)
  - 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 (HIPAA) of 1996 and Public Law 104-191.
  - c. As necessary for the purpose of outside research, evaluation, 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

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the information.

- d. To a provider of mental health services or a public agency, if there is a compelling need for disclosure based upon a substantial probability of harm to the consumer or other individuals
8. Except as noted in #7 above, when requested, confidential information shall be disclosed only under one (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) To an attorney who has been retained or appointed to represent a minor pursuant to an objection to hospitalization of a minor
  - (e) Absent a valid consent or release, to an attorney who is not representing a consumer only if that attorney presents a certified copy of an order from a court directing disclosure of information concerning the recipient to the attorney
  - (f) An attorney shall 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 the information to the attorney, or unless a consent or release has been appropriately executed
  - (g) If necessary in order to comply with another provision of law
  - (h) To the department if the information is necessary in order for the department to discharge a responsibility placed upon it by law
  - (i) To the office of the auditor general if the information is necessary for that office to discharge its constitutional responsibility
  - (j) 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
9. If consent is obtained from the consumer, the consumer's guardian with authority to consent, the parent with legal custody of a minor consumer, 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 consumer 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
10. 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:

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- (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
11. Pursuant to Section 330.1750(2) Mental Health Code Privileged Communication shall be disclosed under one (1) or more of the following circumstances:
- a. If the privileged communication is relevant to a physical or mental condition of the consumer that the consumer has introduced as an element of the consumer's claim or defense in a civil or administrative case or proceeding or that, after the death of the consumer has been introduced as an element of the consumer's claim or defense by a party to a civil or administrative case or proceeding.
  - b. If the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the consumer was informed that any communications could be used in the proceedings.
  - c. If the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the consumer or the consumer's need for a guardian but only if the consumer was informed that any communication could be used in such a proceeding.
  - d. In a civil action by or on behalf of a consumer or a criminal action arising from the treatment of the consumer against HBH's mental health professional for malpractice.
  - e. If the privileged communication were made during an examination ordered by a court, prior to which the consumer was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.
  - f. If the privileged communication was made during treatment that the consumer was ordered to undergo to render the consumer competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the consumer to stand trial.
  - g. Privileged communication may be disclosed under section 330.1946 under the duty to warn clause relating to a threat of harm or violence to a reasonably identifiable third person.
12. In accordance with AR 330.7051(5)(a)(b), a private physician or psychologist is appointed by the court or retained to testify in civil, criminal, or administrative proceedings shall, upon presentation of identification and a certified copy of the court order, be permitted to review the records of the consumer on HBH's premises. Before review, notification shall be provided to the reviewer and to the court if the records contain privileged communication which cannot be disclosed in court, unless disclosure is permitted because of an express waiver of privilege or because conditions that, by law, permit or require such disclosure.
13. Per AR 330.7051(6)(a-c), A prosecutor may be given non-privileged information or privileged information which may be disclosed if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission, or information relevant to alternatives to admission to a hospital or facility, or other information specifically designated in HBH policy.
14. If questions arise regarding the release of confidential records HBH will contact the attorney for Michigan Department of Community Health or the agency's corporate attorney for clarification/guidance.

**Procedure:**

- 1. A summary of Section 330.1748 of PA 258 (Mental Health Code) will be included in each consumer's case record.
- 2. A "Consent for Participation and Receipt of Recipient Rights Information" form and an "Acknowledgement of Receipt of Notice of Privacy Form" ([90-063](#)) is retained in each consumer's record.
- 3. A record shall be kept of all disclosures and shall minimally include the following:
  - a. Date the information was released
  - b. What information was released

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- c. To whom it was released (name and address if known)
  - d. The specific need and purpose for which the information is to be used
  - e. The subsection of Section 330.1748 or other state law, under which the disclosure was made
  - f. A statement indicating the information released is germane to the stated purpose
4. Other than the purposes allowed under HIPAA for treatment, coordination of care, or payment, a Release of Information form signed by the consumer (or parent with legal custody of a minor), or legally appointed guardian will be obtained whenever there is a need to share confidential information with another person or agency.
  5. At a minimum, the Release of Information form will contain:
    - Consumer's name and birth date
    - Agency or person to who the information is to be released
    - The specific information to be disclosed or NOT disclosed
    - The date when the release is to expire
  6. The separate programs of HBH, including contract agencies, may share treatment, payment and/or operations information about a mutual consumer with a need to know, within its own system of services without compromising the consumer's right to confidentiality.
  7. All consumers will be given an opportunity to object to disclosure consented to on their behalf, such as by a parent or guardian if their guardianship status changes. This will be documented on the Release of Information form.
  8. When information is released from the agency, the following points will be followed:
    - a. Any release of information request is to be directed to the HBH Records Clerk
    - b. All requests for information will be recorded in the Release of Information log
    - c. The Records Clerk will determine if the release of information meets the necessary components.
    - d. If the release is determined to be invalid, or no consumer exists, then it shall be returned promptly with a copy of the refusal letter, and the reasons appropriately noted
    - e. The Records Clerk will assure that there is a Release of Information in the consumer's chart and a copy is sent with the request
    - f. All pages being sent will be marked "CONFIDENTIAL"
    - g. Record all information being sent on the Release of Information form and place in the case record
    - h. Complete a letter to accompany the information being sent.
    - i. Ensure that the information is consistent with the request.
    - j. Ensure the information is released within a reasonable time period (fourteen [14] days)
    - k. Notify the consumer's primary worker that a request has been made
    - l. Send an invoice (form [90-086](#)), if appropriate with a copy to finance per the following billing rates:

**Consumers:**

      - \$0.25 per copied page will be charged when consumers are requesting copies. Charges for additional copies will be based on incremental cost.
      - The copy fee must be paid before the copies are released to the consumer.
      - If the request is for "accounting of disclosure" no charge will be made for the first request. All other requests for accounting of disclosure within a twelve (12) month period is the same as l.1.

**Other Entities (Lawyers, Courts, etc.) with appropriate releases/authorizations:**

      - \$23.71 Initial Processing Fee
      - \$1.19 per page up to 20 pages
      - \$0.60 per page for 21-50 pages
      - \$0.23 per page for more than 50 pages
    - m. If the Records Clerk is not certain of how to address a request for Confidential Information the Recipient Rights Officer and/or Privacy Officer will be contacted.
  9. When a consumer would like to review their records:
    - a. A written request must be completed and forwarded to the Records Clerk.
    - b. The Records Clerk will notify the appropriate person of the request as follows:

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- The Medical Director – if the consumer receives medication reviews only.
  - The Primary Worker – if the consumer receives services other than medication reviews
  - The Clinical Supervisor or Clinical Director – if the Primary worker is unavailable
- c. The Records Clerk will coordinate an appointment with the consumer and the Primary Worker/Supervisor to review the chart. (Primary Worker/Supervisor must be present during the review of the chart.)
- d. The Records Clerk will be available for clerical assistance on the date and time of the review.
10. When releasing information to the local police or protective services, staff will:
- a. Immediately report to their supervisor all information provided by a consumer which reveals substantial or serious physical harm may come to the consumer or to another person in the near future.
  - b. Shall, if appropriate, notify local law enforcement authorities or Department of Health and Human Services DHHS protective Services and the Office of Recipient Rights. All employees, volunteers, and contract service providers are required to comply with the mandatory provisions for the reporting of abuse, neglect, and other prescribed conduct set forth in the Child Protective Services (CPS) Act 238, Public Acts of 1975, DHS Adult protective Services Act 519, Public Acts of 1982 and state/local police agencies reporting Act 32, Public Acts of 1988.
  - c. Within fourteen (14) days after receipt of written request from DHS/CPS pertinent records and information shall be released.
12. When releasing information to the news media, staff will:
- a. Consult with the Records Clerk in every event where the news media is requesting information.
  - b. Obtain written consent by the consumer (or parent of a minor or a guardian) before disclosing any information, even if the consumer is not to be identified in the media.
13. When requested, confidential information shall be disclosed only under one or more of the following circumstances:
- a. To the Auditor General
  - b. When necessary to comply with another provision of law (including auditing requirements)
  - c. To Department of Community Health in order for the department to discharge a responsibility placed upon it by law
  - d. To a surviving spouse, or if none, closest relative of the consumer in order to apply for and receive benefits, but only if spouse or closest relative has been designated the personal representative or has a court order

### Definitions/Acronyms:

#### Definitions:

*Care Coordination:* is defined (per MDHHS contract attachment) as a set of activities designed to ensure needed, appropriate and cost effective care for beneficiaries. As a component of overall care management, care coordination activities focus on ensuring timely information, communication, and collaboration across a care team and between Responsible Plans. Major priorities for care coordination in the context of a care management plan include:

- Outreach and contacts/communication to support patient engagement,
- Conducting screening, record review and documentation as part of Evaluation and Assessment,
- Tracking and facilitating follow up on lab tests and referrals,
- Care Planning,
- Managing transitions of care activities to support continuity of care,
- Address social supports and making linkages to services addressing housing, food, etc., and
- Monitoring, Reporting and Documentation.

*Confidential/Protected Health Information:* is defined as health information including consumer demographic information, that is created or received by a provider and which relates to the past, present, or future physical or mental health condition of a consumer or payment related to the provision of health care to the consumer and that identifies or can be reasonably used to identify a consumer (i.e. social security number, case number, address, etc.). (Examples include Progress notes, PCP's, physician orders, service activity logs, etc.)

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*Privileged Communications*: means a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a consumer, 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.

**Acronyms:**

AR – Administrative Rule

COA – Council on Accreditation

CPS - Child Protective Services

DHHS – Department of Health and Human Services (formerly FIA or Family Independence Agency)

EMR – Electronic Medical Record

HBH - Huron Behavioral Health

HIPAA – Health Insurance Portability and Accountability Act

MDHHS – Michigan Department of Health and Human Services

PHI - Protected Health Information

PA – Public Act

PCP - Person Centered Plan

**Forms:**

Information Release Authorization Form (in EMR)

[MDHHS-5515 "Consent to Share Your Health Information" form \(optional state standardized form 90-094 Fax Form](#)[90-102 Denial Letter for Amending/Correcting a Record](#)

Consent for Participation and Receipt of Recipient Rights Information Form (in EMR)

[90-063 Notice of Health Information Practices Acknowledgement Form](#)[90-082 Notice of Health Information Practices Pamphlet](#)**Records:**Records are retained by HBH per the [Record Retention and Storage Policy \(see QI.1.23\)](#).**Reference(s) and/or Legal Authority**Health Insurance Portability and Accountability Act (HIPAA) Act of 1996 (42 CFR Part 2) @ [www.hhs.gov/ocr/privacy](http://www.hhs.gov/ocr/privacy)Mental Health Code 330.1748, 330.1752 @ <http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=mcl-chap330>

Department of Community Health Administrative Rules R 330.7051 @

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=mcl-chap330>Public Act 129 of 2014 @ [http://www.legislature.mi.gov/\(S\(hwyzqa55uohmb4451lmveq55\)\)/mileg.aspx?page=GetObject&objectname=2013-HB-5136](http://www.legislature.mi.gov/(S(hwyzqa55uohmb4451lmveq55))/mileg.aspx?page=GetObject&objectname=2013-HB-5136)

Public Act 559 of 2016

[ORI 1.1.3 Minimum Necessary Protocols for Routine Disclosure of PHI Policy](#)[ORI 1.1.4 Minimum Necessary Policy for Internal and Non-Routine Disclosure of PHI](#)[ORI.2.01 Notification for Amended Health Records Procedure](#)[QI.1.23 Record Retention and Storage Policy](#)**Change History:**

Change Letter	Date of Change(s)	Changes
A	10/23/02	Procedure was brought into new format and transferred to new controlled documentation system with minimal content changes.
B	01/27/03	Added HIPAA language, added references, form numbers, updated definitions
C	06/03/03	Added standard #3, #4, added to Standard #12, B, 3. a – c, added procedure #1
D	08/06/03	Added to standard #12, B, 3, d – added additional language to procedure # 12, D
E	10/01/04	Added to standard #13 in "Information – Standards" – added language to include using corporate attorney or MDCH
F	07/08/05	Added the first bullet and three sub-bullets in the "Information" section to reflect required HIPAA Privacy language due to AAM's formation of the OHCA (Organized Health Care Arrangement), added website references & hyperlinks, added acronyms, references, & hyperlinks
G	03/01/06	Added 12.B.3 and deleted "Request must be made in writing", "HBH must make a determination, if in their professional judgment, it is reasonable to believe that the consumer is/has been subjected to abuse or neglect", "HBH must limit the disclosure to the relevant information expressly authorized by statute or regulation", & "HBH must maintain documentation of all disclosures"; added hyperlinks, changed "FIA" to "DHS" throughout document.
H	06/28/06	Changed "15 days" to "14 days" in 9.J. to comply with MHC

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I	12/04/08	Reviewed and revised to comply with COA 8 <sup>th</sup> Edition Standards and present practices – removed COA chapter-specific references (G1), no other content changes
J	09/30/09	Revised rates for copies (9.L on page 5) to reflect state-allowed copying fees for "Other Entities (Lawyers, Courts, etc.)"
K	02/02/12	Reviewed by the Recipients Rights Advisory Committee 1/23/12 w/ NO content changes.
L	05/23/13	Annual review conducted – no content changes made
M	12/16/14	In 1 <sup>st</sup> bullet in "Information" section removed reference to "AAM" and "OHCA", removed "AAM" and "OHCA" from "Acronym" section.
N	01/13/15	Reviewed by the HBH Recipient Rights Advisory Committee – added "EMR" in "Acronym" section, removed form numbers (90-009 & 90-015) (4 places) and added "(in EMR)" in "Forms" section (2 places), in "Definitions" section under "Confidential/Protected Health Information" removed "service activity logs".
O	02/04/15	Reviewed and revised to add language to comply with MDCH Uniform Consent Form released 01/01/15 - Added 4 <sup>th</sup> bullet in "Information" section, added "DCH-3927" in "Forms" section, in "References" section added "Public Act 129 of 2014, under "Procedure" section #6 removed "B. Name of program authorized to release information.", in "C" added "or NOT disclosed", removed "E. The purpose for which the information is to be used...", removed "G. A notice to the receiver of the disclosed information that...", removed "H. Verification that the person authorizing the release...", in "Procedure" section #9 removed "administrative section of the", in 9.F added "printed".
P	07/27/16	Added reference to ORI.2.01 (Notification of Amended Records Procedure) 2 places, in 3 <sup>rd</sup> (square) bullet in "Information" section removed "in the locked file room at the end of the business day" and replaced with "stored in a secure environment at all times", in 4 <sup>th</sup> (square) bullet changed "MDCH to "MDHHS", in 10.b 3 <sup>rd</sup> bullet added "or Clinical Director", in "Acronym" section added "MDHHS".
Q	01/24/17	In "Information" section 4th bullet and also "Forms" section changed "DCH-3297" to "MDHHS-5515", changed hyperlinks corresponding to the revised form, no other content changes made.
R	10/31/17	Total rewrite of procedure – see Controlled Documentation Manager for previous versions or changes made. Reviewed and approved by the Recipient Rights Advisory Committee 10/30/17.
S	08/07/18	Reviewed by the Recipient Rights Advisory Committee – in "Standards" section 7.a added "Note:....)", added 8.d, 8.e, & 8.f and added #12, and #13, in "Acronyms" section added "AR", made several minor wording/grammatical changes/corrections throughout document without changing sentence content.