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Policy Area Legal

FREEDOM OF INFORMATION ACT

POLICY

Detroit Wayne Integrated Health Network (“DWIHN”) is a public body required by law to comply with Michigan’s Freedom of Information Act, Public Act 442 of 1976, as revised (“FOIA”). It is DWIHN’s policy to grant people who are eligible access to public records, unless those records are exempt from disclosure by law.

PURPOSE

The purpose of these Policies, Procedures and Guidelines (“Policy”) are to ensure uniformity of practice and procedures in releasing public records and the charging of fees to process a FOIA request. Further, the purpose of this Policy is to comply with the requirements of FOIA that DWIHN make available to the public procedures and guidelines regarding its implementation of FOIA. Accordingly, copies of this Policy shall be made available to the general public for free, and this Policy shall further be made available on DWIHN’s FOIA Website Page (www.dwihn.org/contact-us/freedom-information-act-foia).

APPLICATION

1. The following groups are required to implement and adhere to this policy: DWIHN Board, DWIHN Staff, DWIHN contracted staff
2. This policy serves the following populations: Members of the Public
3. This policy impacts the following **contracts/service lines**: MI-HEALTH LINK, Medicaid, SUD, Autism, Grants, General Fund

KEYWORDS

Any terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under FOIA.

STANDARDS

1. FOIA Coordinator: In the absence of a specific designation by DWIHN's Chief Executive Officer, the individual serving as General Counsel, or his or her designee, shall act as DWIHN's FOIA Coordinator. In no event may the Chief Executive Officer of DWIHN act in the capacity of the FOIA Coordinator. DWIHN's FOIA Coordinator may designate assistants as may become necessary and delegate some of the responsibilities of the FOIA Coordinator to such individuals.
2. Receipt of FOIA Requests:
 - a. A "FOIA Request" is a request for public records made in writing with enough specificity to enable the FOIA Coordinator to locate the records. It may, or may not, specifically state that such request is being made pursuant to FOIA. Requests shall not be accepted from individuals serving a sentence of imprisonment in a state, county, or federal correctional facility.
 - b. The FOIA Coordinator is the designated recipient for all FOIA Requests. **Any employee, officer, or board member of DWIHN that receives a FOIA Request shall immediately forward such request to the FOIA Coordinator.** Persons questioning how a FOIA Request may be initiated shall be directed to DWIHN's FOIA Website Page, and further advised to submit such requests in writing to the attention of the FOIA Coordinator.

Requests may be submitted by mail to:

Detroit Wayne Integrated Health Network
Attn: FOIA Coordinator
707 W. Milwaukee
Detroit, MI 48202

Via email at FOIACoordinator@dwihn.org

A FOIA Request received via electronic transmission is not considered to have been received until one (1) business day after the electronic transmission is made, or if the FOIA Request is sent by electronic mail and delivered to a spam or junk-mail folder, the request is not received until one (1) day after DWIHN first becomes aware of the written request.

- c. Upon receipt of a FOIA Request, the FOIA Coordinator shall immediately stamp the FOIA Request with the date the request was received, review the request to determine if it complies with the statute, and begin to process it.
3. Procedure for Response:

- a. The FOIA Coordinator or designee shall review the request and collaborate with other DWIHN departments, as necessary, to see if there is a public record of the information requested in existence and available to DWIHN. If there is a public record, the FOIA Coordinator or designee shall determine whether the public record is exempt from disclosure.
- b. If the FOIA Request would require DWIHN to create a new public record, the FOIA Coordinator shall determine, in consultation with DWIHN administration, on a case by case basis, whether the interests of the public and/or DWIHN are best served by the creation and production of such new record in compliance with the FOIA Request.
- c. An initial response to the FOIA Request will be sent within (5) five business of the date it was received by DWIHN (and not the date upon which it was received by the FOIA Coordinator). A request received by electronic mail shall be considered to have been received on the next business day following its transmission, or as provided for in FOIA.
- d. DWIHN's initial response may grant the FOIA Request in full, grant it in part and deny it in part, deny the FOIA Request entirely (in compliance with FOIA requirements), or seek a one-time extension of up to ten (10) business days to respond to the FOIA Request. The response must at a minimum comply with the requirements in MCL 15.235. The follow-up response to a time-extension notification may grant the FOIA Request in full, grant it in part and deny it in part, deny the FOIA Request entirely (in compliance with FOIA requirements). No additional time extensions may be permitted.
- e. If the requestor specifies in their request a preference to receive the response in electronic format (e.g., .pdf), and in the sole discretion of the FOIA Coordinator, it is determined that producing the response in the requested format is feasible, reasonable, and cost effective, the response may be provided to the requestor electronically.
- f. Every response denying, in whole or in part, a FOIA Request shall include which could clarify the reason for denial, to the extent that such clarifying information may be produced. Additional information regarding the requestor's rights to appeal DWIHN's decision. DWIHN's appeal process will comply with the requirements set forth in MCL 15.240.
- g. DWIHN shall keep and maintain a time stamped copy of each FOIA Request, DWIHN's subsequent response(s), and any accompanying documents for a minimum of one (1) year from the date the FOIA Request was received and the response(s) issued.
- h. Alternatively, at the discretion of the requestor, DWIHN shall make available an opportunity for the requestor to make an inspection and examination of the identified public records at DWIHN's offices, during regular business hours.

4. Denials and Appeals:

- a. Any denials of a FOIA Request shall be made in compliance with MCL 15.243. Each denial shall reference the reason for the denial and the applicable FOIA section, as well as any additional information which could clarify the reason for denial, to the

extent that such clarifying information may be produced.

- b. Information and records concerning treatment and services rendered to individuals in DWIHN's possession are not public records, and are specifically exempt from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), the Michigan Mental Health Code (MCL 330.1001 *et seq.*), the Michigan Public Health Code (MCL 333.1101 *et seq.*), the federal regulations covering the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2), and other applicable laws concerning the confidentiality of an individual's health and personal information.
- c. After receiving DWIHN's final response denying all or a portion of a FOIA Request, a requestor may, at his or her discretion:
 1. Make a written appeal (containing the word "appeal") to DWIHN's Chief Executive Officer, or
 2. Commence a civil action in Wayne County Circuit Court within one hundred eighty (180) days of the requestor's receipt of DWIHN's final determination.
- d. In the event DWIHN's Chief Executive Officer receives an appeal of a FOIA denial, he or she shall within ten (10) business days provide a written response to the requestor either reversing the disclosure denial, upholding the disclosure denial, reversing the denial in part and upholding it in part, or issue a one-time notice extending the response period for up to ten (10) business days.
- e. Requestors may also appeal the imposition of a fee by DWIHN to the extent that such fee exceeds the amount permitted under this Policy. Such appeal may be made to DWIHN's Chief Executive Officer, in the same manner as denial appeals described above, or may be made to the Wayne County Circuit Court within forty-five (45) days of the receipt of the final determination (or the Chief Executive Officer's determination upon appeal).
- f. Pursuant to an appeal of excessive fees, DWIHN's Chief Executive Officer shall within ten (10) business days provide a written response to the requestor either a waiving the contested fee, reducing the fee, upholding the fee, or issuing a one-time notice extending the response period for up to ten (10) business days.

5. Reimbursement of Costs:

- a. DWIHN may charge the requestor fees as reimbursements for costs incurred pursuant to a granted (or partially granted) FOIA Request, in compliance with FOIA. DWIHN may recover costs only on the six (6) following categories of expenditures:
 1. Labor associated with searching for, locating, and examining of public records.
 2. Labor associated with necessary review and/or redaction of exempt information from, public records to be produced.
 3. Labor associated with the duplication or publication, including the making of paper copies, to be given to a requestor.
 4. Non-paper physical media for electronic media storage.

5. Actual incremental costs of necessary duplication of paper records.
 6. Actual costs of mailing, if any.
- b. DWIHN's fees for the above cost-reimbursed services shall be as indicated in the Fee Itemization Schedule attached hereto as Exhibit A. Any fee that is charged shall be in compliance with MCL 15.234.
- c. Labor Costs.
1. Labor costs shall be calculated and charged in increments of 15 minutes or more, with partial time increments rounded down. Rates for labor costs shall be at the lowest-paid employee rate for an DWIHN employee capable of performing the applicable task.
 2. With regard to costs for labor associated with necessary review and/or redaction of exempt information, such costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate determined the Workforce Opportunity Wage Act (MCL 408.411 *et seq.*). As of the most recent revision of this Policy, this rate is \$57.90 per hour or \$14.48 per 15-minute increment of time.
 3. The labor fee shall include 50% of the applicable labor charge amount, to cover or partially cover the cost of employee fringe benefits. In no event shall DWIHN shall not charge more than the actual cost of fringe benefits.
 4. Overtime wages shall not be included in the calculation of labor costs unless specifically agreed to by the requestor, in writing.
- d. The fee for duplication of paper records shall not exceed \$0.10 per normal sheet of paper. DWIHN shall utilize the most economical means available for making copies available, including using double-sided printing.
- e. In the event DWIHN determines through a good-faith estimate that the fees to process the FOIA Request will be more than \$50.00, the requestor may be required to pay a good faith deposit of up to one-half ($\frac{1}{2}$) of the anticipated costs before DWIHN begins processing the FOIA Request or provides the public records.
- f. DWIHN may, in its sole discretion, waive or reduce of the fee if DWIHN determines that searching and/or furnishing record copies is in the public's interest.
- g. Public records shall be furnished without charge for the first \$20.00 of the fee for each in the following situations:
1. An individual who submits an affidavit stating facts showing inability to pay the cost because of indigence and/or that the individual is receiving public assistance. A form Affidavit of Indigence is attached hereto as Exhibit B. An individual may not invoke this discount if the individual has previously received discounted copies of public records from DWIHN twice during the preceding calendar year, or if the individual is requesting the information in conjunction with outside parties who are providing payment to the individual to make the request. If a requestor is ineligible for the discount, DWIHN shall inform the requestor specifically of the reason for ineligibility. If the requestor is eligible, DWIHN shall fully note the discount

on the detailed itemization.

2. A nonprofit organization formally designated by the state to advocate the rights of persons with developmental disabilities and/or mental illness, pursuant the Mental Health Code (MCL 330.1931).
- h. No fees shall be charged for any information that is available to the public on DWIHN's website.
- i. In the event that DWIHN fails to respond to a FOIA Request within the statutorily allotted five (5) business days, DWIHN shall reduce its charges for labor in the amount of five percent (5%) per day of delayed response, up to a maximum of a fifty percent (50%) reduction.

QUALITY ASSURANCE/IMPROVEMENT

DWIHN shall review and monitor contractor adherence to this policy as one element in its network management program, risk management program, and Quality Assessment/Performance Improvement Program (QAPIP) Work-plan..

The quality improvement programs of Network Providers must include measures for both the monitoring of and the continuous improvement of the programs or processes described in this policy.

COMPLIANCE WITH ALL APPLICABLE LAWS

DWIHN staff, Direct Contracted Network Providers, and their subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives, as amended..

LEGAL AUTHORITY

1. Michigan Freedom of Information Act, PA 442 of 1976, as revised
2. Michigan Mental Health Code, PA 258 of 1974, as revised
3. Health Insurance Portability and Accountability Act of 1996
4. Confidentiality of Alcohol and Drug Abuse Patient Records
5. Workforce Opportunity Wage Act, 2014 PA 138

RELATED POLICIES AND PROCEDURES

1. FREEDOM OF INFORMATION ACT Policy L10001 Effective 5/26/14 for FY 14, Rev 9/18/17 for 10/1/2017, Rev 5/28/20 for FY 20
2. [Customer Service Medical Record Request Retrieval Procedure](#)

CLINICAL POLICY

NO

INTERNAL/EXTERNAL POLICY

EXTERNAL

Attachments

[Exhibit B FOIA Form Affidavit of Indigence.pdf](#)

[Exhibit A FOIA Fee Itemization Schedule.pdf](#)

Approval Signatures

Step Description	Approver	Date
Final Approval	Eric Doeh: President and CEO	02/2023

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