
Chapter: **RECIPIENT RIGHTS**
Title: **INFORMED CONSENT FOR SERVICE**
(See also MCCMH MCO Policies 9-601, "Informed Consent for Psychotropic Medication, and 2-053, "Psychotropic Medication for Youth in Foster Care.")

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I. Abstract

This policy establishes standards and procedures of the Macomb County Community Mental Health (MCCMH) Board for obtaining the informed consent of consumers of MCCMH services.

II. Application

This policy shall apply to directly-operated and contracted network providers of the MCCMH Board.

III. Policy

It is the policy of the MCCMH Board that informed consent shall be obtained from a consumer, parent with legal custody of a minor, guardian, or other legal representative of a consumer empowered to provide consent prior to a consumer's participation in any Board program or activity; except that informed consent shall not be required in order to provide treatment (including treatment of a minor) in order to prevent serious bodily harm, or in situations of life threatening behavior. (This excludes Crisis Center phone activities.)

IV. Definitions

- A. Consent
Written informed agreement on the part of a consumer, parent with legal custody (not necessarily physical custody) of a minor, or guardian or other legal representative of the consumer empowered to provide consent; informed consent assumes competency, knowledge, comprehension, and voluntariness.

1. **Legal Competency**
Competency requires the ability of an individual to rationally understand the nature of a procedure, risks, other consequences, and other relevant information. An individual shall be presumed to be legally competent. This presumption may be rebutted only by a court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of the guardianship. An individual shall be presumed legally competent regarding matters that are not within the scope and authority of the guardianship.

2. **Knowledge**
Knowledge includes basic awareness of the procedure, the risks, potential consequences, and other relevant information, such as treatment options and alternatives. To consent, a consumer or his/her legal representative must have basic information about the procedure, risks, other related consequences, and other relevant information. The standard governing required disclosure is what a reasonable consumer needs to know in order to make an informed decision. Other relevant information includes all of the following:
 - a. The purpose of the procedures;
 - b. A description of the attendant discomforts, risks, and benefits that can reasonably be expected;
 - c. A disclosure of appropriate alternatives advantageous to the consumer; and
 - d. An offer to answer further inquiries.

3. **Comprehension**
Includes an understanding of what the personal implications of providing consent will be based upon his/her knowledge. An individual must be able to understand what the personal implications of providing consent will be based upon the information provided to him/her.

4. **Voluntariness**
Voluntariness means an exercise of choice without constraint or coercion. Consumers must have free power of choice without the intervention of an element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, including promises or assurances of privileges or freedom. There shall be an instruction that a consumer is free to withdraw consent and to discontinue participation or activity at any time without prejudice.

NOTE: Voluntariness is superseded when treatment has been ordered via Probate, District, or Circuit Court decree. Treatment includes administration of drugs and any other service for the treatment of an individual. If a court-ordered client refuses the administration of

medication, the court must be notified of noncompliance to court-ordered treatment.

- B. **Emancipated Minor**
A person under 18 years of age who is considered, by operation of law or court order, to have the rights and responsibilities of an adult, including the right to authorize his/her own preventative mental health care without parental knowledge or consent.
- C. **Minor**
An individual under the age of 18 years.

V. Standards

- A. Informed consent for services/treatment by MCCMH providers shall be given in writing by a competent individual who has knowledge about and understands the services/treatment to which he/she is consenting.
- B. Competence for informed consent shall be addressed and the legal authority for consent (i.e., parent or guardian) shall be clarified and documented as necessary.
- C. The guardianship order granting a guardian the power to consent to medical treatment on behalf of a consumer shall be entered into the consumer's medical record.
- D. MCCMH consumers shall be presented with written information regarding their rights as consumers of Board services.

VI. Procedures

- A. Informed consent in writing shall be secured when a consumer is admitted to MCCMH services/treatment and prior to the commencement of service(s)/treatment.
- B. Special accommodations shall be made to read or explain the acknowledgment and consent form to a consumer, parent, or legally empowered guardian who is visually-impaired, hearing-impaired, illiterate, non-English speaking, emotionally upset, developmentally disabled, or a minor to enhance his/her understanding.
- C. MCCMH providers shall encourage consumers to ask questions about their choices or about anything they do not understand regarding any service to be provided.
- D. **Determining Ability to Provide Consent**
 - 1. At the time of admission and prior to commencing services a consumer shall be assessed to determine whether any legal (i.e., guardianship status) or clinical issue may compromise the individual's ability to give informed consent. (See elements of consent as defined herein, IV.A.1-4.)

2. If, in the clinical judgment of the MCCMH provider clinician (based on intake and assessment of the consumer, interviews, techniques such as requests to repeat back information or other techniques), the consumer's competence to provide informed consent is questioned, the consumer shall direct the question of his/her competence to a MCCMH provider physician.
3. If a physician concludes that the consumer is not competent to give informed consent (e.g., was recently released from an institutional environment which may have resulted in diminished capacity of the consumer or does not comprehend the treatment, risks, or benefits) the physician may wish to ask the court to either assist with the decision-making or request that the court appoint a guardian.
4. If a consumer has been court ordered to seek/obtain mental health services/treatment and refuses to provide his/her consent, services/treatment may not proceed. (Consent shall not be required in order to provide treatment in order to prevent serious bodily harm, or in life threatening behavior). If, in the judgment of the clinician, the situation is not life threatening, s/he shall inform the consumer that a brief letter will be sent within three working days to the referring judicial body informing it of the consumer's decision not to provide consent.
5. If it is determined that delivery of services can proceed, the consumer, parent with legal custody of a minor, legally empowered guardian, or other legal representative of the consumer will be asked to read, discuss, initial and sign an acknowledgment and consent form (see example, Exhibit A). The consumer, parent with legal custody of a minor, legally empowered guardian, or other legal representative of the consumer shall be given adequate opportunity to read the documents before initialing or signing them. Consent shall generally be signified by the initial and signature of the consumer, parent with legal custody of a minor, legally empowered guardian or other legal representative of the consumer and is not executed unless witnessed. This procedural step shall be documented in the consumer's clinical record.

E. Content of Informed Consent

1. Consumers, parents with legal custody of minor consumers, legally empowered guardians, or other legal representatives of consumers shall be informed by the treating/service professional of:
 - a. The type and range of treatment being offered;
 - b. The purpose of that treatment;
 - c. Any known risks connected with treatment;
 - d. Benefits to be reasonably expected from treatment;
 - e. Any appropriate alternative treatment;
 - f. Conditions under which services might be withdrawn;
 - g. Any specific rules concerning participation in the program being offered;

- h. The client's rights as a consumer of mental health services;
 - i. The professional qualifications of the mental health professional who may provide services/ treatment to him/her;
 - j. The nature of the standard of care which the mental health professionals may provide; and
 - k. Whether the treatment plan will be reviewed and approved by an interdisciplinary team.
- 2. Consent shall be signified by the signature of the client, parent with legal custody of a minor, guardian, or other legal representative of the consumer on the acknowledgment and consent form (see example, Exhibit A).
 - 3. If a consumer, parent with legal custody of a minor, legally empowered guardian, or other legal representative of the consumer orally expresses his/her consent for services and is unable to provide his/her signature on the acknowledgments and consent form, he/she may affix the letter X in place of his/her signature. This must be witnessed by a provider staff member and two additional individuals.
 - 4. If a consumer, parent with legal custody of a minor, legally empowered guardian, or other legal representative of the consumer is unable to provide consent in written fashion (signature or single letter mark), a positive body gesture (head-hand) can be used as an affirmative response. If this method is used, the use shall be documented on the acknowledgment and consent form, obtaining signatures of the physician and two additional individuals as witnesses.
 - 5. If a consumer orally expresses his/her consent for services yet is unwilling to provide consent in a written fashion, this shall be documented on the consent form, obtaining the signatures of the physician and two additional individuals as witnesses.
 - 6. Verbal (oral) expressions of consent for service must be witnessed by at least one individual who is other than the individual providing treatment to that consumer.
- F. Informed consent shall be re-obtained whenever interim circumstances or changes substantially affect the risks or other consequences or benefits reasonably to be expected or on an annual basis.
- NOTE: If a duly empowered individual (other than the consumer) has signed the informed consent form, staff shall inform him/her of the availability to participate in developing the Plan of Service (POS).
- G. If treatment being provided includes chemotherapy, an additional informed consent for psychotropic medications shall be secured in writing (see example, Exhibit B).

- H. Fee determination and insurance authorization consent in writing, shall also be similarly secured. (For example forms, see MCO Policy 7-001, "Determination of Financial Liability," Exhibits A and B.)
- I. Additional Provisions for Minors
1. An emancipated minor may provide consent for any treatment services provided by the MCCMH Board. Questions regarding the legal status of a minor should be directed to the MCCMH Recipient Rights Director or the County Corporation Counsel.
 2. A minor who is 14 years of age or older may request and receive outpatient mental health services without the minor's parent, guardian, or person *in loco parentis*'s consent or knowledge and without causing the responsible adult to incur any financial liability. The mental health services shall be limited to no more than 12 sessions or 4 months per request for services and may not include pregnancy termination referral services or the use of psychotropic medications.
 3. The minor's parent, guardian, or person *in loco parentis* shall not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial possibility 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*.
 4. Services provided to a minor shall, to the extent possible, promote the minor's relationship to the parent, guardian, or person *in loco parentis*, and not undermine the values that the parent, guardian, or person *in loco parentis* has sought to instill in the minor.
 5. After the twelfth session or fourth month of services the mental health professional shall 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.
 6. Compliance to Section 3 of the Child Protection Act shall be maintained. (See Exhibit C.)
 7. Consent for treatment of a minor of divorced parents must be obtained, except as noted above, by the parent who has been granted legal custody of the minor.
 8. In cases of joint legal custody, either parent may provide informed consent to treatment for mental health services, with consent from the primary (if so designated) caretaker preferred. (Determination via review of the divorce decree from Circuit Court.)

NOTE: Information pertaining to the POS may be shared with either parent unless limitations (confirmed via divorce decree) have been placed upon either individual's parental rights.

9. Step-parents may not provide consent for treatment.
 10. Authority to consent for routine, non-surgical medical care for children served by the DHS Foster Care system (e.g. health assessments; developmental/behavioral assessments; laboratory services; mental health assessments, evaluations, counseling and/or therapy; nutritional assessments; treatment of communicable diseases) shall abide by the applicable policies and procedures set forth by DHS in the Children's Foster Care Manual. (See VII.D. for reference to the applicable DHS manuals.)
 11. Authority to consent for psychotropic medication for children served by the DHS Foster Care system shall take place according to the policies and procedures set forth in MCCMH MCO Policy 2-053, "Psychotropic Medication for Youth in Foster Care."
- J. Others Who May Be Empowered To Provide Informed Consent
1. Individuals who hold Power of Attorney and various forms of guardianship may sign the consent if it can be documented via court order (guardianship) or notarized statement (Power of Attorney) that such powers are specifically enumerated;
 2. Individuals who have been appointed as "Guardian Ad Litem" have limited advisory powers and therefore may advise only and may not sign the consent for treatment;

VII. References / Legal Authority

A. Michigan Mental Health Code

1. MCL 330.1100b(16)
2. MCL 330.1100a(17)
3. MCL 330.1702
4. MCL 330.1704
5. MCL 330.1707

B. Michigan Department of Community Health Administrative Rules

1. 1998 Administrative Rules, R 330.7003

2. 2007 Administrative Rules, R 330.7011
- C. Michigan Probate Code
 1. MCL 722.4
 2. MCL 722.4e(1) and (1)(g)
 3. MCL 722.124a
- D. Department of Human Services Service Manual, FOM 721, 722-11, 801, 802-1, 901-6

VIII. Exhibits

- A. Acknowledgment and Consent (example)
- B. Consent for Psychotropic Medications (example)
- C. Child Protection Act (excerpt), MCL 722.623