


RECIPIENT RIGHTS

CHAPTER: 1	SECTION: 10	SUBJECT: RECIPIENT RIGHTS
TITLE: CONSENT TO TREATMENT AND INFORMED CONSENT		
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LAST REVISED/EFFECTIVE DATE: 09/29/2021		
ISSUED AND APPROVED BY:  EXECUTIVE DIRECTOR		

I. PURPOSE:

To provide procedure for assuring written informed consent is obtained from the legally empowered individual prior to the initiation of services.

II. APPLICATION:

All Community Mental Health of Ottawa County (CMHOC) staff and contract agency staff as specified by contract.

III. DEFINITIONS:

Consent - means a written agreement executed by a consumer, a minor consumer’s parent or consumer’s legal representative with authority to execute consent, or a verbal agreement of a consumer that is witnessed and documented by an individual other than the individual providing treatment.

Empowered Guardian - a person who has been designated by the county probate court as guardian with the specific authority to give consent.

Informed Consent – requires the following:

Legal Competency – a consumer 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 guardianship. A consumer shall be presumed legally competent regarding matters that are not within the scope and authority of guardianship.

Knowledge – to consent, a consumer or legal representative must have basic information about the procedures, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a reasonable patient needs to know in order to make an informed decision. Other relevant information includes all of the following:

- i. The purpose and procedures.
- ii. A description of the attendant discomforts, risks, and benefits that can reasonably be expected.
- iii. A disclosure of appropriate alternatives advantageous to the consumer.
- iv. An offer to answer further questions.

Comprehension – A consumer must be able to understand what the personal implications of providing consent will be based upon the information provided.

Voluntariness- There shall be 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 to the consumer/legal representative.

Written - Consent must be an agreement in writing which includes the basic elements of consent.

Parent - when used in these procedures refers to:

1. a parent of a minor child.
2. a person with whom the child resides and from whom the child receives care and support, who has legal authority to make decisions on behalf of the child.
3. a representative from the Juvenile Court, or Family Independence Agency Protective Services with proper court authority.

IV. POLICY:

It is the policy of CMHOC that written informed consent is obtained from a consumer of services or applicant for service, from his/her empowered guardian or from a parent, if a minor, prior to providing treatment, changing treatment, or providing medical services. The individual providing consent shall be made aware of the purpose of the procedure, the risks and benefits, alternative procedures available, and offered an opportunity to ask and receive answers to questions.

A minor 14 years of age and older may request and consent to limited outpatient services without the consent or knowledge of their parent.

V. PROCEDURE:

The following procedures are established for obtaining consent and for evaluating comprehension. These procedures specify under specific circumstances the types of information which shall be disclosed and steps which may not be taken without endangering voluntariness. These procedures shall precede an evaluation of competency for purposes of determining whether guardianship proceedings are necessary.

Intake:

- A. At the time of intake and/or initial evaluation, each consumer shall be asked to sign the Consent for Mental Health Services and Acknowledgment of Recipient Rights Information Form.

The consumer/guardian will be informed that the consent can be withdrawn at any time without prejudice to the consumer/guardian.

This form will be placed in the case record. The consumer has the right to participate in decisions regarding his/her treatment, including the right to refuse treatment at any time.

- B. If a consumer cannot read or understand the material provided:

1. The provider shall make a reasonable attempt to assist the consumer in understanding the materials.
 2. A note describing the explanation of the materials and who provided the explanation shall be entered in the consumer's medical record.
- C. If a consumer refuses to sign:
1. The reason and/or circumstances shall be documented on the form by the staff involved, and
 2. The Case Manager/Supports Coordinator/Clinician assigned to the case shall consult with the Team Supervisor, Program Coordinator/Supervisor or his/her designee regarding the appropriate action to take.
- D. Copies of all legal documents empowering an individual to provide consent for another (i.e., guardianship authority, divorce document, power of attorney, etc.) will be requested at intake and placed in the medical record.
- E. CMHOC does not prohibit, or otherwise, restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of the consumer who is his/her patient, for the following:
1. The consumer's health status, medical care, or treatment options, including any alternative treatment that may be self-administered,
 2. Any information the consumer needs in order to decide among all relevant treatment options.
 3. The risks, benefits, and consequences of treatment or nontreatment.
 4. The consumer's right to participate in decisions regarding his/her healthcare, including the right to refuse treatment, and to express his/her preferences about future treatment decisions.
- F. Consumers ordered by a court of law to receive mental health services on an involuntary basis represent a special classification. An informed consent for services need not be obtained prior to providing service, but efforts shall always be made to obtain written consent whenever possible before services are initiated. A copy of the court order will be requested and placed in the record.

Individual Plan of Service (IPOS):

- A. The consumer or legal representative shall sign the Individual Plan of Service (IPOS), indicating their consent to the treatment including medical services described therein.
- B. The consenting individual shall be made aware of the procedures, risks, and other consequences and relevant information. This shall be done each time the IPOS is changed or reobtained if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.
- C. A consumer or legal representative may at any time request a review or modification of the IPOS. These requests shall be directed to the Case Manager/Supports Coordinator/Clinician, who will schedule a meeting with the consumer (parent or legal representative) to discuss the request.
- D. If a consumer or legal representative refuses to sign the IPOS (consent to treatment):

1. the reason shall be documented on the IPOS form, and
2. the Case Manager/Supports Coordinator/Clinician shall consult with his/her Team Supervisor, Program Coordinator/Supervisor, or his/her designee to determine the appropriate action to take.

Minors:

Consumers who are minors, 14 years of age or older, may request and receive mental health services and a mental health professional may provide outpatient mental health services without the consent or knowledge of his/her parent, guardian, or person in loco parentis. Those services must be limited to outpatient services, excluding pregnancy termination referral services and the use of psychotropic drugs, twelve sessions **or** four months per request for services (which ever comes first).

Minors receiving services without the consent or knowledge of a parent outlined above may consent to release of information consistent with Policy 1.11.

The minor's parent, guardian, or person in loco parentis is not informed of the services without the consent of the minor unless the treating mental health professional determines a compelling need for disclosure based upon substantial probability of harm to the minor or another individual, and if the minor is notified of the treating professional's intent to inform the minor's parent, guardian, or person in loco parentis.

Services provided to a minor under this section shall, to the extent possible, promote the minor's relationship to the parent, guardian, or person in loco parentis, and shall not undermine the values that the parent, guardian, or person in loco parentis has sought to instill in the minor.

Services provided to the minor are limited to not more than 12 sessions or 4 months per request for services, and after these expire, 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.

The minor's parent, guardian, or person in loco parentis is not liable for the costs of services that are received by the minor.

The mental health professional is required to report suspected child abuse or neglect.

Revocation of Consent:

If a consumer/legal representative revokes a consent the responsible Case Manager/Supports Coordinator/Clinician shall request that it be in writing on the original consent form. If the consumer/legal representative refuses to put the revocation in writing, the Case Manager/Supports Coordinator/Clinician shall document such on the original consent form.

A consumer/legal representative is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the consumer and/or legal representative.

Competency Evaluation

During the course of treatment, the Case Manager, Supports Coordinator, or Clinician shall determine if the consumer is able to understand the nature of a procedure/service,

the potential risks, consequences, and other relevant information concerning the proposed service.

If it is determined that the consumer is unable to understand the above areas, then the Case Manager/Supports Coordinator/Clinician shall take the necessary steps to secure a psychological evaluation of competency.

The Case Manager/Supports Coordinator/Clinician may petition the court for guardianship only in those areas that the consumer needs assistance, and only after all alternatives to guardianship have been explored and dismissed.

VI. ATTACHMENT:

None Applicable

VII. REFERENCE:

Michigan Mental Health Code: Chapter 1 and Chapter 7
Administrative Rules Part 7: Rights of Recipients
MDHHS – ORR Attachment B
CARF Standards