

BARRY COUNTY COMMUNITY MENTAL HEALTH AUTHORITY POLICY AND PROCEDURE MANUAL

Policy: 7-C Informed Consent to Treatment		Application: BCCMHA Staff and Providers
Approved: <u>Richard S. Thiemkey, M.A.</u> <small>Richard S. Thiemkey, M.A. (Feb 4, 2020 15:37:15 EST)</small> Richard Thiemkey, MA Executive Director		
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PURPOSE

It is the intention of this policy to ensure that written informed consent is obtained from a recipient in services or who has applied for services, or from an empowered guardian, foster parent, foster care worker or from a parent, if the recipient is a minor, prior to providing treatment, changing treatment, or providing medical services.

POLICY

Recipient will receive an explanation of the treatment they are consenting to including an explanation of the procedure, possible risks, the purpose of treatment, benefits to be reasonably expected, treatment alternatives, and information on the voluntariness of treatment.

Recipient will be informed that their records and progress may be presented as appropriate during staff meetings and for supervisory meetings.

Recipients will be informed of the billing system. This information will include an explanation of the type of information needed for billing purposes, and those agents who gain access to that information.

BCCMHA will assess the need for legal guardianship for recipients who: are unable to provide informed consent; are unable to care for themselves; have been adjudged to be incompetent; or have a minor status and the parental rights have been severed or limited. When issues of guardianship have been identified, staff will take appropriate measures to determine if guardianship or alternatives to guardianship should be pursued.

DEFINITIONS

Consent: Consent is a written agreement executed by a recipient, a minor recipient's parent, a recipient's legal representative with authority to execute a consent, or a full or limited guardian with the authority to consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment. [MCL 330.1100a(19)]

(Informed Consent): Written consent on the part of the recipient, guardian, foster parent, foster care worker or parent of a minor, which assumes competency, knowledge, comprehension, and voluntariness. Informed consent requires the following:

Competency: Requires the ability of an individual to understand rationally the nature of a procedure, the risks, other consequences, and other relevant information.

Comprehension: An individual must be able to understand what the personal implications of providing consent will be based upon the purpose of the procedure, a description of the attendant discomforts, risks, and benefits that can reasonably be expected, a disclosure of appropriate alternatives advantageous to the recipient, and offer to answer further questions [AR 7003(1)(b)].

Knowledge: An individual has received the information that a reasonable person needs to make a decision, including what is being proposed, the risks, benefits, and other consequences of making a decision to consent or not consent. Relevant information includes the purpose of the procedure; a description of the attendant discomforts, risks, and benefits that can reasonably be expected; a disclosure of appropriate alternatives advantageous to the recipient; and an offer to answer further questions.

Voluntariness: There shall be free power of choice without the intervention of an element of force, fraud, duress, overreaching or other ulterior form of constraint or coercion, including promises or assurances of privileges or freedom [AR 7003(1) (a-d)]. There shall be an instruction that an individual or guardian is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient [AR 7003(1) (d)].

Written: A consent must be an agreement in writing which includes the basic elements of consent.

Recipient: A person who receives behavioral health services from an agency/facility, or from an entity other than an agency/facility or from other agencies/facilities, which are operated by or under contract with the Department of Health and Human Services or County Community Mental Health Service Board.

Parent: When used in these procedures refers to a parent of a minor child; a person with whom the child resides and from whom the child receives care and support such as a foster parent, who has legal authority to make decisions on behalf of the child; or a representative from the juvenile court, or Department of Human Services Protective Services with proper court authority

PROCEDURES

It is the practice of BCCMHA to obtain written consents. All consents and revocations related to SUD services and/or treatment must be in writing. [ref. MCL 330.1262 (2)]

Consent for treatment will be obtained upon entry into services, or if the situation changes, and annually thereafter from BCCMHA recipients and/or their guardians. During the obtainment of consent for treatment, the recipient and/or guardian will be instructed that an individual is free to withdraw consent and to discontinue participation or service activity at any time without prejudice to the service recipient. Informed consent will be reobtained if changes in

circumstances substantially change the risks, other consequences or benefits that were previously expected. [AR 7003 (3)].

A minor 14 years of age and older may request and consent to limited outpatient services without the consent of their parent/legal guardian(s).

Copies of all legal documents empowering an individual to provide consent for another (guardianship authority, divorce document, power of attorney, designation of patient advocate, etc.) will be requested at intake, or as needed, and subsequently placed into the record.

Recipients 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 services, but efforts shall always be made to obtain written consent whenever possible before services are initiated. A copy of the court order will be required and placed in the case record.

The recipient, guardian, foster parent, foster care worker or parent shall sign the treatment plan, indicating their consent to the treatment including medical services described therein. This shall be done each time the treatment plan is modified.

The recipient, guardian, foster parent, foster care worker or parent of a minor may at any time request a review or modification of the treatment plan. These requests shall be directed to the clinician/case manager, who will schedule a meeting with the recipient (guardian or parent) to discuss the request.

If a recipient, guardian, foster parent, foster care worker or parent of a minor revokes consent; the responsible clinician/case manager shall request that it is in writing on the original consent form. This can be done at any time without prejudice to recipient/guardian. If the recipient, guardian, foster parent, foster care worker or parent of a minor refuses to put the revocation in writing, the clinician/case manager shall document such on the original consent form. Revocation must include the effective or start date of the revocation.

During the course of treatment, the clinician shall determine if the recipient is able to understand the nature of a procedure/service, potential risk, consequences and other relevant information concerning the proposed service:

1. If it is determined that the recipient is unable to understand the above areas, then the clinician shall take the necessary steps to secure a psychological evaluation of competency [AR 7003(2)] which may include petitioning the court for guardianship.
2. The clinician may petition the court for guardianship only in those areas that the recipient needs assistance [AR 7003(2)] Justification for petitioning the probate court for guardianship consideration shall be entered in the recipient's clinical record. Any petition for guardianship must be limited to the scope that is essential to provide the recipient with the needed services. Absent court appointment of a guardian or exercise by a court of guardianship powers, adult recipients are presumed legally competent. [AR7009(3)(a)- (d)]

The staff completing the initial intake session and/or annual requests the recipient, empowered guardian, or parent if the recipient is a minor, to sign the “Consent to Treatment” Form, witnesses the signature and signs on the witness line within the EHR.

The clerical/clinical staff completing the initial intake session and/or annual presents the corresponding service rights booklet and gives a verbal explanation of the Rights Summary.

Note: A signature on the Consent to Treatment Form also indicates receipt of the rights booklet.

If the recipient, guardian, foster parent, foster care worker or parent of a minor is unable to sign the Consent to Treatment Form, but desires treatment, the staff person assigned to conduct the intake will document the reason on the Consent to Treatment form, sign as a witness, date the form, and enter it into the recipient record. When possible and appropriate, a staff person will again present the Consent to Treatment Form to the recipient, guardian, foster parent, foster care worker or parent of a minor, at a later date, when there is the ability to sign.

If the recipient, guardian, foster parent, foster care worker or parent of a minor is unwilling to sign the Consent for Treatment Form but has indicated a desire for treatment and a willingness to participate in a treatment plan, the clinician will see the recipient for the initial assessment and revisit the subject again. An attempt will be made to obtain a signature from the recipient, guardian, foster parent, foster care worker or parent of a minor on the Consent for Treatment Form. If the second attempt to obtain the signature from the recipient, guardian, foster parent, foster care worker or parent of a minor is not successful and/or the reason for the recipient, guardian, foster parent, foster care worker or parent of a minor not wanting to sign the Consent for Treatment Form is a part of his or her mental illness, treatment may proceed with approval from the Executive Director for a determined duration based on the clinical judgment of the Clinical Director and the assigned clinician. Documentation will be made by the clinician in the recipient record the reasons for the c, guardian, foster parent, foster care worker or parent of a minor not wanting to sign the document and the clinical reasons the clinician believes it to be in the best interest of the recipient to proceed with treatment.

The clinician will explain the implications of treatment to the recipient, guardian, foster parent, foster care worker or parent in the case of a minor, as soon as is clinically appropriate.

Note: The clinician’s explanation of treatment given to a recipient, empowered guardian, or parent in the case of a minor, should contain the following:

1. An explanation of the procedure,
2. An explanation of the purpose of the treatment, and
3. An explanation of the benefits to be reasonably expected.

GUARDIANSHIP OF MINOR

Legal Guardian is a person who has been appointed by a judge to take care of a minor child (called a “ward”) or incompetent adult personally with authority to handle the ward’s physical and mental care. In the case of a minor child, a minor’s guardian has the powers and

responsibilities of a parent who is not deprived of custody of the parent's minor and unemancipated child. MCL 700.5215.

POWER OF ATTORNEY FOR MINOR CHILD

In lieu of the minor's right to consent to mental health services under the conditions listed above, the parent with legal custody of a minor or a guardian of a minor may execute a Power of Attorney (POA) document that delegates powers to the POA. Provided the POA document does not restrict the individual's ability to consent to psychotropic medications or authorize the release/disclosure of behavioral health information, the POA may consent to medication and/or authorize disclosure of confidential information. The parent retains their right to make all care decisions and is not required to consult with the POA before making a decision. Similarly, provided the POA is acting within the restrictions of the POA document and is not consenting to marriage or adoption, the POA is not required to consult with the parent before making a decision. The parent retains the ultimate authority to consent and can revoke the POA in the event of a disagreement in treatment.

1. Pursuant to the Estates and Protected Individual's Code (PA 386 of 1998, MCL 700.5103), a parent or guardian of a minor may delegate powers regarding care or custody of the minor to another person (attorney-in-fact) for a period not exceeding 180 days by means of a properly executed power of attorney. A person granted powers under a properly executed power of attorney may consent to mental health treatment (including psychotropic medications), but only during the effective period and only within the scope of the delegated powers.
2. A guardian of a minor who has been appointed pursuant to the Michigan Estates and Protected Individual's Code (PA 386 of 1998, MCL 700.5205) with the authority to make medical decisions has the authority to consent to mental health treatment (including psychotropic medications).
3. If a parent or guardian is serving in the armed forces of the United States and is deployed to a foreign nation, and if the power of attorney so provides, a delegation under this section of the Estates and Protected Individual's Code (PA 386 of 1998, MCL 700.513) is effective until the thirty-first day after the end of the deployment.

WAIVER FOR SERIOUS EMOTIONAL DISTURBANCE

Please note that consent to the use of psychotropic medications and consent for the Waiver for Serious Emotional Disturbance (SEDW) Family Choice Assurance must be given by one of the following:

1. Birth parents/legal guardians for temporary court wards,
2. Caseworkers or agency delegates for MCI/state wards, and
3. The court for permanent court wards.

MINOR WITHOUT CONSENT

A minor 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. Except as otherwise provided in Sec 707, 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 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. [MCL 330.1707(1)]

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 will not undermine the values that the parent, guardian, or person in loco parentis has sought to instill in the minor. [MCL 330.1707(2)]

Services provided to the minor are limited to not more than 12 sessions or 4 months per request and after these expire, the behavioral health professional terminates the services, or, with the consent of the minor, notifies the parent, guardian, foster parent, foster care worker or person in loco parentis to obtain consent to provide further outpatient services [MHC 1707(3)]

The minor's parent, guardian, or person in loco parentis is not liable for the costs of services that are received by a minor under subsection 707(1). [MCL 330.1707(4)]

This does not relieve a mental health professional from his or her duty to report suspected child abuse or neglect under section 3 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.623 of the Michigan Compiled Laws. [MCL 330.1707(5)]

Upon a minor turning 18 years of age, all documents, including, but not limited to: Treatment Plan, Consents, Releases and Fee Determination, shall be re-signed by the individual themselves.

Minors emancipated by operation of law or court order may consent to all treatment services, including psychotropic medications.

Questions regarding the legal status of a minor should be directed to the BCCMHA Recipient Rights Office.

Consent for medication for a minor of divorced parents must be obtained, except as noted above, from the parent with legal custody of the minor. In cases of joint legal custody, either parent may consent to medication, with consent from the primary (if so designated) caretaker preferred. (Determination via review of the divorce decree)

It is considered best practice to engage birth parents/legal guardians in all aspects of a child's health and mental health care unless there are reasons to restrict this engagement, e.g. a court order prohibiting contact between the parent and the child.

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 not excluded from the individual's authority. See Power of Attorney for Minor Child form.
2. Individuals who have been appointed as "Guardian Ad Litem" have limited advisory powers and do not have the authority to consent to treatment.

SUBSTANCE USE DISORDER TREATMENT

If an individual who is the subject of a record maintained under section 261 does not give written consent, the content of the record may be disclosed only as follows:

(a) To medical personnel to the extent necessary to meet a bona fide medical emergency. (b) To qualified personnel for the purpose of conducting scientific statistical research, financial audits,

or program evaluation, but the personnel shall not directly or indirectly identify an individual in a report of the research audit or evaluation or otherwise disclose an identity in any manner.

- (c) Upon application, a court of competent jurisdiction may order disclosure of whether a specific individual is under treatment by a program. In all other respects, the confidentiality shall be the same as the physician-patient relationship provided by law.
- (d) Upon application, a court may order disclosure of a record for the purpose of a hearing under section 266 or 268. (330.1263)

SUBSTANCE USE DISORDER TREATMENT OF MINOR

"Child" means an individual less than 14 years of age. (330.1260(1)(a))

"Minor" means an individual 14 or more years of age and less than 18 years of age. (330.1260(1)(e))

The consent to the provision of substance use disorder related to medical or surgical care, treatment, or services by a hospital, clinic, or health professional authorized by law executed by a minor who is or professes to be an individual with a substance use disorder is valid and binding as if the minor had achieved the age of majority. The consent is not subject to later disaffirmance by reason of minority. The consent of any other person, including a spouse, parent, guardian, or person in loco parentis, is not necessary to authorize these services to be provided to a minor. (330.1264(1))

For medical reasons, the treating physician, and, on the advice and direction of the treating physician, a member of the medical staff of a hospital or clinic or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or person in loco parentis as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information. (330.1264(2))

A spouse, parent, guardian, or person in loco parentis of a minor is not legally responsible for services provided under this section (330.1264(3)).

A program that is requested by a minor's parent or a person in loco parentis to a minor to perform substance use disorder treatment and rehabilitation services for the minor may perform those services for the minor without the minor's consent if the minor is less than 14 years of age, as verified by the minor's parents or person acting in loco parentis, and if the request is made in writing. 330.1265(1)

A minor's parent or a person in loco parentis to a minor may request that substance use disorder treatment and rehabilitation services be provided to the minor by a program. 330.1265(2) If substance use disorder treatment and rehabilitation services are requested under subsection

- (2) and the minor does not consent to the substance use disorder treatment and rehabilitation services; the program shall cause to have conducted a diagnostic evaluation to determine whether the minor is physiologically dependent. Except as otherwise provided in subsection (4), a diagnostic evaluation shall be conducted within 48 hours of the request for substance use disorder treatment and rehabilitation services. (330.1265(3))

If it is determined during a diagnostic evaluation conducted under subsection (3) that the minor is in need of detoxification, the program may arrange for detoxification services and those services may be performed, with the consent of the minor's parent or person in loco parentis to the minor and without the minor's consent, for a period that shall not exceed 5 days. After the minor's detoxification, the program shall cause to have the minor's diagnostic evaluation completed within 48 hours. [330.1265(4)]

Except as otherwise provided below, after a diagnostic evaluation has been completed under this section, substance use disorder treatment and rehabilitation services shall not be performed unless 1 of the following occurs:

- (a) The minor consents to substance use disorder treatment and rehabilitation services.
- (b) It is determined under section 266 that substance use disorder treatment and rehabilitation services are necessary for the minor. [330.1265(5)]

If it is determined as a result of a diagnostic evaluation conducted under this section that the minor is physiologically dependent, substance use disorder treatment and rehabilitation services may be performed without the minor's consent pending a hearing under section 266 and for a period that shall not exceed 7 business days. [330.1265(6)]

Psychotropic drugs shall not be used under this section by a program on a minor unless the minor consents or the court orders the use of the drugs at a hearing under section 266 [330.1265(7)]

A minor's parent or person in loco parentis to a minor may petition the court requesting the court's determination as to whether treatment and rehabilitation services are necessary for the minor. [300.1266(1)]

Upon receipt of a petition under subsection (1), the court shall appoint a guardian ad litem to represent the minor for the purposes of this section and sections 267 and 268 and shall notify all of the following persons of the time and place for the hearing:

- (a) The minor's parents or person in loco parentis to the minor.
- (b) The minor.
- (c) The program director.
- (d) The guardian ad litem for the minor. [300.1266(2)]

A minor has the right to an independent diagnostic evaluation by a program. [330.1266(3)]

A hearing on a petition under subsection (1) shall be held within 7 days of the court's receipt of the petition. [330.1266(4)]

At a hearing under this section, the court shall determine whether substance use disorder treatment and rehabilitation services are necessary. If the court determines that substance use disorder treatment and rehabilitation services are necessary, the court shall determine a suitable placement for the minor in the least restrictive setting available. [330.1266(5)]

In making the determinations under subsection (5), the court shall obtain and examine the diagnostic evaluation prepared for the minor under section 265. If an independent diagnostic

evaluation was prepared; the court shall examine that evaluation. Information obtained under this section shall not be used to authorize a petition under section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2. [330.1266(6)]

The court shall not order substance use disorder treatment and rehabilitation services under this section on the grounds that the minor's parent or person in loco parentis to the minor is unwilling or unable to provide or arrange for the minor's management, care, or residence. [330.1266(7)]

Court records maintained under this section are confidential and open only by order of the court to people who have a legitimate interest. [330.1266(8)]

CONSENT FOR PSYCHOTROPIC MEDICATIONS

Information regarding informed medication consent is located in the Psychiatric Services – Medication Policy.

REFERENCES

BCCMHA

CARF

Michigan Department of Health and Human Services

Michigan Mental Health Code

Center for Medicare & Medicaid Services

Office of Recipient Rights

MSA Bulletin 1259-EPSDT

EPIC

42 CFR

ATTACHMENTS

MDHHS-5515_Consent_to_Share_Behavioral_Health_Information_613787_7.dot

Consent form attachment.pdf

Tele psychiatry Informed Consent attachment.pdf

DPOA of a Minor