

CHAPTER Service Delivery	CHAPTER 02	SECTION 003	SUBJECT 45
SECTION Access to Services		DESCRIPTION Informed Consent	
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APPLICATION:

☒ CMH Staff	☒ Board Members	☒ Provider Network	☒ Employment Services Providers
☒ Employment Services Provider Agencies	☒ Independent Contractors	☒ Students	☒ Interns
☒ Volunteers	☒ Persons Served		

POLICY:

Lapeer County Community Mental Health (LCCMH) obtains informed consent from the person served, or applicable parent or guardian, for participation in all mental health and substance use disorder services.

STANDARDS:

- A. The person served or their guardian is given adequate opportunity to read the informed consent and ask questions about the proposed treatment before signing.
- B. Informed consent is obtained prior to:
 1. The person served receiving services or participating in LCCMH programs, but not including necessary emergency services
 2. The person served being photographed, audiotaped, fingerprinted, or viewed through one-way glass
 3. Disclosing confidential information requiring consent

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- C. Informed consents do not include any language in which the person served or their guardian waives or appears to waive, a legal right, including releasing the agency or its contract agencies from liability for negligence.
- D. Informed consent shall be reobtained if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected. Informed consent does not exceed 12 months.
- E. A consent is executed when it is signed by the person served or guardian.
- F. When an element of force, duress, deceit, or any other form of coercion is present, requests for informed consent will not be made without intervention in that coercion.

PROCEDURES:

- A. The primary case holder:
 - 1. Verifies the individual signing the consent is in one of the following categories:
 - a. The person served is 18 years of age or older and does not have a guardian
 - b. The guardian of the person served who is legally empowered to execute the consent
 - c. The parent or guardian with legal and physical custody of the person served who is younger than 18 years of age
 - d. Other individuals specified in section 716 or 717 of the Mental Health Code
 - 2. Uses the initial and annual assessment processes to evaluate comprehension and whether the person served is competent to give

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informed consent, and whether guardianship proceedings are to be considered.

- a. A report must be made to the supervisor if there is a need to file a petition for guardianship. The Behavior Treatment Plan Review Committee (BTPRC) can also be consulted if needed.
 - b. Evaluation of the ability to give consent precedes any guardianship proceedings.
3. Provides the person served or guardian with an explanation of the procedures, risks, other consequences, and other relevant information needed to make an informed decision and offers to answer any questions.
4. Explains to the person served or guardian they are free to withdraw consent and to discontinue participation or activity at any time without prejudice to the person served, guardian or the individual consenting.
5. Ensures the consent is read to the person served or guardian or provided in a language understood by the person served or guardian if the primary case holder deems it necessary for their understanding of the consent. This is documented in the electronic health record of the person served along with the consent form.
6. Assures the informed consent:
 - a. Is filed in the electronic health record of the person served.
 - b. Is updated if changes in circumstances substantially change the risks, other consequences, or previously expected benefits.
- B. In accordance with the Mental Health Code [MHC 330.1707], 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

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drugs), without the consent or knowledge of the minor's parent, guardian, or person in loco parentis.

1. The minor's parent, guardian or loco parentis will not be informed of the services without the consent of the minor, unless the mental health professional treating the minor determines there is a compelling need for disclosure, based upon a substantial probability of harm to the minor or to another individual. The minor must be notified of the treatment professional's intent to inform the minor's parent, guardian, or person in loco parentis.
2. Services provided to the minor are limited to not more than 12 sessions or four months per request for services. After the 12th session or fourth month of services, the mental health professional terminates the services, or with the consent of the minor, notifies the parent, guardian, or person in loco parentis to obtain consent to provide further outpatient services.
3. Services provided to a minor will, 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.
4. The minor's parent, guardian, or person in loco parentis not informed of services is not liable for the costs of services that are received by a minor.

DEFINITIONS:

Informed Consent: a written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute a consent, or a verbal agreement of a recipient witnessed and documented by an individual other than the individual providing treatment. All of the following are elements of informed consent:

1. **Legal Competency:** 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. [Administrative Rule 30.7003]

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2. Knowledge: To consent, a recipient, or legal representative must have basic information about the procedure, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a reasonable patient needs to know to make an informed decision. Other relevant information included all of the following:
 - a. The purpose of the procedure
 - b. A description of the attendant's discomforts, risks, and benefits that can reasonably be expected.
 - c. A disclosure of appropriate alternatives advantageous to the person served.
 - d. An offer to answer further inquiries.
3. Comprehension: An individual must be able to understand what the personal implications of providing consent is based upon the information provided under subdivision (b) of this subrule.
4. 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, assurances, privileges, or freedom. There shall be an instruction an individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the person served.

REFERENCES:

Michigan Mental Health Code, Section 330.1718
 Administrative Rules, Section 330.7158
 Mental Health Code, Section 716
 Mental Health Code, Section 717
 Administrative Rule, 30-7003

LKJ:lr/kn

Supersedes: #10/09045 dated 10/20/2009