

SANILAC COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

CLINICAL POLICY

NUMBER: RR030

NAME: INFORMED CONSENT

INITIAL APPROVAL DATE:	05/29/2005	BY: Administrative Committee
STAKEHOLDER REVIEW:	06/20/2023	BY: Recipient Rights Advisory Comm.
(LAST) REVISION DATE:	10/16/2020	BY: Recipient Rights Officer
(LAST) REVIEW DATE:	06/20/2023	BY: Recipient Rights Advisory Committee

I. PURPOSE

To establish policies, procedures and standards regarding informed consent of individuals receiving services of mental health services. To define informed consent, the conditions requiring informed consent and to establish procedures for obtaining informed consent

II. APPLICATION

Populations: **ALL**
Programs: Direct: **ALL**
Contracted: **ALL**

III. POLICY

It is the policy of Sanilac County Community Mental Health Authority to obtain written informed consent from an individual receiving services, from his/her empowered guardian or from a parent, if a minor, prior to providing treatment, changing treatment or providing medication.

IV. DEFINITIONS

Consent - 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 authorized under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, 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.

Informed Consent - A written agreement signed by the individual receiving services, the parent of a minor or legally empowered guardian to give consent, which assumes and requires competence, knowledge and free will.

Informed Consent Board - Three individuals appointed by the Chief Executive Officer to evaluate the capacity of an individual receiving services to give or refuse to give consent.

Informed consent requires:

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Comprehension - The individual receiving services has the ability to understand the personal implications of what is being proposed with any risks, benefits and other consequences of the decision.

Knowledge - The individual receiving services or legal representative has received the relevant information a reasonable person needs to make an informed decision, including what is being proposed, with risks, benefits and other consequences of making a decision to consent or not consent.

Relevant information should also include appropriate alternatives and an offer to answer all questions.

Legal Competency: The individual receiving services 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.

Voluntariness - The individual chooses freely to consent or not consent without force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, including promises or assurances of privileges or freedom. The individual is informed that consent, if given, can be withdrawn at any time without prejudice.

V. STANDARDS

- A. Informed consent shall be obtained for the following conditions involving individuals receiving services:
 1. Participation in a CMH-run program.
 2. Routine medical services.
 3. Medication consent.
 4. Photographing, audio taping and/or videotaping of individuals receiving services.
 5. Disclosure of confidential information which requires consent.
 6. Any significant change in treatment.
 7. Performance of labor which contributes to the operation and maintenance of the CMH program for which the program would otherwise employ another person.
[See Recipient Rights policy RR014- Residential Labor]
- B. When requesting consent for any condition[s] included in number one above, there shall be:
 1. Explanation of what is proposed.
 2. Explanation of purpose.
 3. Explanation of risks and benefits.
 4. Offer to answer any questions.
- C. Requests for informed consent shall be made without the intervention of any element of force, duress, deceit or any other form of coercion.
- D. Request for informed consent shall include an explanation that the consenting individual may revoke their consent without reprisal at any time, either verbally or in writing.
- E. Upon verbal or written revocation of consent, the procedures or services to which consent is being revoked shall be discontinued.

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- F. Informed consent may be obtained from:
1. Voluntary individual.
 2. Legal parents of a minor.
 3. Legal guardian or court-appointed custody.
 4. Individual receiving services, with their advocate.
 5. Court-ordered individual. If consent/document is refused, the court system must be notified.
 6. A minor fourteen [14] years of age or older as follows:
 - a. A minor fourteen [14] years of age or older may request and receive mental health services and mental health professionals may provide services on an outpatient basis [excluding pregnancy termination referral services and use of psychotropic drugs] without the consent or knowledge of the minor's parent, guardian or person in loco parentis.
 - b. 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 minor or another and if the minor is notified of the treating professional's intent to inform.
 - c. Services provided to the minor are limited to not more than twelve [12] sessions or four months per request and after these expire, 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.
- G. There shall be forms available for obtaining consent and revoking consent.

VI. PROCEDURE

When any conditions exist which require informed consent of an individual, parent of a minor or legally empowered guardian, the staff member responsible for obtaining informed consent shall:

- A. Staff Member
1. Assumes competency on the part of the individual giving consent unless:
 - a. The staff has reason to believe that the individual is not competent in which circumstances that staff member shall follow procedures as established in Section B below.
 2. Gives a full explanation of the procedure[s], risk[s], consequences and other relevant information including:
 - a. A full explanation of the nature of the procedure[s], service[s] and of the care to be provided.
 - b. A full explanation of the purpose[s], risk[s], side effect[s] and other benefits of all services and procedures to be provided.
 - c. A full explanation of alternatives to the service[s] and procedure[s] offered.
 - d. Offer to answer any question.
 3. Informs the consenting individual that consent is voluntary and that consent may be revoked at any time, either verbally or in writing, without reprisal.
 4. Allow the individual giving consent adequate opportunity to read the document before signing. When necessary, translate the document so that the individual giving consent is able to understand. [Such translation is to be documented, signed and placed in the record by the staff person obtaining consent.]

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5. Obtain informed consent [as evidenced by signature] without the intervention of an element of force, duress, deceit or any other form of coercion.
6. Request that the individual giving consent date the document.
7. Staff member or other competent person signs and dates the document in the space provided for witness.
8. Places the document in the agency record as per agency operating procedures.

When the staff has reason to believe that the individual is not competent to give informed consent:

A. Staff Member

1. May decline to obtain informed consent on the grounds that the person is not capable of giving or refusing to give that informed consent.
2. Inform the Chief Clinical Officer, in writing, the reasons for a conclusion that the person is not capable of giving or refusing to give an informed consent.

B. Chief Clinical Officer

1. Determines whether the staff's written conclusion that the person is not capable of giving or refusing to give an informed consent is of substantial weight.
2. If the Chief Clinical Officer concurs with the staff member's conclusions, requests the staff to request psychological evaluation to determine the person's suspected need for guardianship. Evaluation of the ability to give consent shall precede any guardianship proceedings.
3. If the Chief Clinical Officer does not concur with the staff member's conclusion, a request will be made to the Chief Executive Officer to convene an Informed Consent Board.

C. Chief Executive Officer

1. Appoints an Informed Consent Board consisting of the following members:
 - Two mental health professionals of different disciplines with appropriate clinical experience or training.
 - A third person, not employed by the program, selected by the Chief Clinical Officer from qualified volunteers, with an interest in mental health or intellectual or developmental disabilities advocacy and services.
 - One Informed Consent Board member shall have prior clinical contact with the person whose ability to give informed consent is at issue but no Board member shall have been involved in either the action or application for which consent is needed or the decision to evaluate the need for guardianship proceedings.
2. Upon receipt of the Informed Consent Board's recommendation that a person may not have the capacity to give informed consent, shall authorize a staff member to execute a petition for guardianship or to seek a significant other family member to submit said petition; or
3. Upon receipt of the Informed Consent Board's recommendation or notification from the probate court that a person has the capacity to give informed consent and has refused to consent shall authorize staff to act accordingly; or
4. Upon receipt of the Informed Consent Board's conclusions that informed consent is absent either because a person has not been made sufficiently aware of the procedures, risks, ramifications, benefits or alternatives to treatment or because a decision is not voluntary, shall cause the persons to be provided the necessary information and an opportunity for voluntary choice.

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D. Informed Consent Board

1. Evaluates the capacity of the person to give or refuse to give the required consent by interviewing those persons deemed necessary and by evaluating clinical records and test results.
2. Submits a written report to the Chief Executive Officer stating the findings of fact and including the following:
 - a. The person's desires in the matter when possible.
 - b. A conclusion whether the consent or refusal is, or will be, informed.
 - c. The recommendations of the Informed Consent Board.
3. The recommendations of the Informed Consent Board may include recommendations for those mental, physical, social or educational evaluations it deems necessary to further ascertain the capacity of the person to give informed consent [or the need of a minor approaching the age of eighteen [18] for the protective services of a guardian] to determine if guardianship will promote and protect the well-being of the person or to arrive at a suitable guardianship design to encourage the development of maximum self-reliance and independence.
4. A copy of an Informed Consent Board's report shall be placed in the individual's case record.

VII. ATTACHMENTS

None

VIII. APPEALS

An individual receiving services, or another individual on behalf of an individual receiving services, has the right to appeal decisions concerning informed consent. Appeals may be made in accordance with Sanilac County Community Mental Health Authority Appeals Policy.

IX. REFERENCES

Mental Health Code 330.1752, 330.1707.
DHHS Administrative Rules R330.6013 and R330.7003.
Recipient Rights Policy RR014 - Residential Labor