

NORTH COUNTRY COMMUNITY MENTAL HEALTH ADMINISTRATIVE MANUAL

CHAPTER: Five – Member Rights
PROCEDURE NAME: INFORMED CONSENT
EFFECTIVE DATE: September 1, 2019

PURPOSE

To establish guidelines for determining whether a recipient of, or applicant for, mental health services is capable of giving or refusing to give informed consent.

APPLICATION

All North Country Community Mental Health direct service programs and contracted direct service providers.

DEFINITIONS

Consent: A written agreement executed by a recipient, a minor recipient's parent, a recipient's legal representative with authority to execute consent, or a full or limited guardian authorized under the estates and protected individuals code (EPIC), 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.

Empowered Guardian: a person designated by the county probate court as a guardian with the specific authority to give consent.

Informed Consent: All of the following are elements of informed consent:

Comprehension: an individual must be able to understand what the personal implications of providing consent will be based upon the information provided under Knowledge.

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

- the purpose of the procedures,
- a description of the attendant discomforts, risks, and benefits that can reasonably be expected,
- a disclosure of appropriate alternatives advantageous to the recipient,
- an offer to answer further inquiries.

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. A person with a limited guardian shall be presumed legally competent in all areas which are not specifically identified as being under the control or scope of the guardian,

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 an individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient.

Power of Attorney: a written document that authorizes another person to act (loco parentis) in the place of the person granting the power (parent):

Properly Executed Power of Attorney: A power of attorney document that is notarized or signed in the presence of 2 witnesses who also sign the document. The witness cannot be an individual who is providing treatment. The document must stipulate that the authority to authorize treatment extends to mental health treatment and not simply “emergency or medical treatment as deemed necessary.” The power-of-attorney must also include consent for psychotropic medications if the parent is agreeable. If the document is not properly executed, it will not be accepted, however, NCCMH will provide an approved form to be filled out by the consenting parent

Recipient: An individual who receives mental health services from a community mental health program or from a provider under contract with the CMH.

PROCEDURE

EVALUATION

At intake and/or subsequent to the review of past mental health records, the clinician, or treatment team shall make a determination of the capacity and competency of the individual receiving services. This evaluation shall be consistent with current medical and/or clinical standards. Any evaluation suggesting that the individual receiving services lacks competency shall cause the clinician and/or treatment team to request a full psychological exam which may lead to a petition of guardianship, or exploration of other methods of securing informed consent.

Guardianship proceedings will not be instituted unless there is sufficient reason to doubt the recipient’s comprehension, as provided under this procedure.

When a recipient’s comprehension is in doubt, justification for petitioning the probate court for guardianship consideration shall be entered in the recipient’s clinical record.

NCCMH will not petition for, or otherwise cause the filing of, a petition for guardianship of greater scope than is essential.

When the recipient demonstrates that he or she is capable of providing informed consent, NCCMH staff will petition or cause a petition to be filed with the court to terminate a recipient’s guardian or narrow the scope of the guardian’s powers.

SERVICES TO MINORS

A minor, 14 years of age or older, may request and receive mental health services and a mental health professional may provide such services on an out-patient basis, without the consent or knowledge of the minor’s parents, guardian, or other person in loco parentis.

The services provided to such a minor shall not include pregnancy termination referral nor the prescription, or administration, of psychotropic drugs.

The minor’s parents, guardian, or other person in loco parentis shall not be informed of such services without the consent of the minor unless the treating professional determines (including documentation with justification) a compelling need for disclosure based upon the substantial probability of harm to the minor recipient or another individual.

- Should such a disclosure as noted above be determined to be appropriate, the minor will be notified by the treating professional prior to disclosure.
- 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 in loco parentis has sought to instill in the minor.

- Services provided to a minor as described above shall be limited to not more than 12 sessions or four months per request for services. After this period of time, the treating mental health professional shall terminate services or, with the consent of the minor, notify the parent, guardian, or person in loco to obtain consent to provide further out-patient services.
- The minor's parent, guardian, or person in loco parentis is not liable for the costs of services that are received by a minor as described above.
- This procedure does not relieve a mental health professional from his or her duty to report suspected child abuse under the child protection law. [See NCMCH Abuse and Neglect Procedure]

AUTHORITY TO CONSENT ON BEHALF OF A MINOR

The parent with legal custody of a minor has the authority to consent to mental health treatment (including psychotropic medications) for the minor if the parent's rights have not been otherwise delegated by the parent or limited by a court order with respect to medical decisions.

Pursuant to the Estates and Protected Individual's Code, a parent or guardian of a minor may delegate powers regarding care or custody of the minor to another person for a period not exceeding 180 days by means of a properly executed power of attorney [POA]. A person granted powers under a properly executed power of attorney may consent to mental health treatment but only during the effective period and only within the scope of the delegated powers.

If a parent with legal custody of a minor or a guardian of a minor with decision-making powers has voluntarily placed the minor in out-of-home care under the authority of the Michigan Social Welfare Act, pursuant to the Michigan Child Caring Organizations Act, only the parent with legal custody or the person with POA of a minor as described above has the authority to consent to mental health treatment including psychotropic medications.

If the court has taken jurisdiction of the minor either as a temporary court ward (for neglect or delinquency) or as a permanent court ward, the court will designate, by court order, the "care, custody, and control" of the minor to either the Family Division of the Circuit Court or the Department of Health and Human Services (or its designated child placing agency). In these cases, the authority to consent is as follows:

- For all wards, the authority to consent to routine, non-surgical medical care, which includes mental health treatment, but excludes psychotropic medications, rests with the court, MDHHS, or its designated child placing agency.
- For permanent court wards or MCI Wards, the authority to consent for psychotropic medications rests only with the court-appointed supervising agency.
- For temporary wards, the supervising agency must seek to obtain parental consent for psychotropic medication. If the parent with legal custody is not available, a worker from the supervising agency may sign for psychotropic medication only as a condition of admission for an emergency psychiatric hospitalization. If psychotropic drugs are prescribed for continued use upon discharge from a hospital or as a result of outpatient treatment, parental consent is required. If the parents are unavailable to give consent or refuse to consent, psychotropic medications may not be prescribed or administered to the minor unless the court has specifically granted consent.

REFERENCE: Michigan Mental Health Code 330.1707 Rights of Minor
DCH Administrative Rule R330.7003 Informed Consent
Estates and Protected Individuals Code PA 386 of 1998, MCL 700.5205, 700.5103
Michigan Social Welfare Act PA 280 of 1939 MCL 400.115c; Michigan Child Caring
Organizations Act PA 116 of 1973, MCL 722.124a
Michigan Probate Code Act 288 of 1939, MCL 712A.1 to 712A.32
Youth Rehabilitation Services Act (PA 150 of 1973, MCL 803.303 et seq.)

APPENDIX A: Sample Power of Attorney for Minor Form

REVIEWED: 03/24/08; 07/01/13

REVISED: 05/31/07; 09/20/10; 11/09/15; July 03, 2019

APPROVED BY SIGNATURE:

Christine Gebhard

Chief Executive Officer

09/10/2019

Date

Kim Rappleyea

Recipient Rights Officer

09/10/2019

Date

Power of Attorney- Authorized for Use at North Country CMH

Pursuant to Michigan Compiled Laws § 700.5103

I, _____, of _____ do hereby
(Printed Name of Parent) *(City/Town, State)*

make, constitute, and appoint _____, of _____,
(Printed Name of Appointee) *(City/Town, State)*

as my true and lawful attorney in fact for me and in my name, place, and stead. I give unto said attorney full power to do and perform all duties which I have as a custodial parent and legal guardian of

_____ whose date of birth is _____, including, but
(Printed Name of Minor Child) *(Month/Day/ Year)*

not limited to making necessary decisions concerning the health, education, property, custody and general care of said child. This delegation includes the authority to consent to medical treatment, mental health treatment, medication (including psychotropic medication), and admission to a hospital.

In accordance with MCL § 700.5103, this delegation does not include the power to consent to marriage and /or adoption.

This delegation of power will end 180 days after the date that I affix my signature below, unless revoked in writing by me before that date.

(Signature of Parent)

(Date Signed)

Witness 1: _____
Signature Date

Print Name: _____

Witness 2: _____
Signature Date

Print Name: _____

Power of Attorney- Authorized for Use at North Country CMH

Pursuant to Michigan Compiled Laws § 700.5103

I, _____, of _____ do hereby
(Printed Name of Parent) *(City/Town, State)*

make, constitute, and appoint _____, of _____,
(Printed Name of Appointee) *(City/Town, State)*

as my true and lawful attorney in fact for me and in my name, place, and stead. I give unto said attorney full power to do and perform all duties which I have as a custodial parent and legal guardian of

_____ whose date of birth is _____, including, but
(Printed Name of Minor Child) *(Month/Day/ Year)*

not limited to making necessary decisions concerning the health, education, property, custody and general care of said child. This delegation includes the authority to consent to medical treatment, mental health treatment, medication (including psychotropic medication), and admission to a hospital. In accordance with MCL § 700.5103, this delegation does not include the power to consent to marriage and /or adoption.

This delegation of power will end 180 days after the date that I affix my signature below, unless revoked in writing by me before that date.

(Signature of Parent)

(Date Signed)

Acknowledged before me this _____ day of _____, 20

Notary Public _____

_____ County

My Commission Expires: _____