Policy: Abuse and Neglect Reporting (10C)		Application: BCCMHA Staff & Providers
Reviewed 8/17/2022	Revised 11/19/2019	First Effective 7/25/1996

I. PURPOSE

It is the intention of this policy to assure that written informed consent is obtained from a client of service or application for services, from his/her empowered guardian, foster parent, foster care worker or from a parent, if a minor, prior to providing treatment, changing treatment, or providing medical services.

II. POLICY

Clients will receive an explanation of the treatment they are consenting to. This explanation will contain 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.

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

Clients 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 clients 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.

III. DEFINITIONS

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 that is witnessed and documented by an individual other than the individual providing treatment [MHC 1100(a) (19)/RR Standard B1].

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 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)/RR Standard B3].

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.

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)/RR Standard B2]. 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)/RR Standard B4].

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

Recipient/Client: 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.

IV. PROCEDURES

Consent for treatment will be obtained upon entry into services, or if the situation changes, and annually thereafter from BCCMHA clients and/or their guardians. During the obtainment of consent for treatment, the client 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.

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, etc.) will be requested at intake, or as needed, and subsequently placed into the record.

Service 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 needs 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 client, 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 client, 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 client (guardian or parent) to discuss the request.

If a client, 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 client, 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 client 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 client 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)/RR Standard B5].
2. The clinician may petition the court for guardianship only in those areas that the client needs assistance [AR 7003(2)/RR Standard B6].

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

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 client, 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 client record. When possible and appropriate, a staff person will present again the Consent to Treatment Form to the client, guardian, foster parent, foster care worker or parent of a minor, at a later date, when there is the ability to sign.

If the client, 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 client for the initial assessment and revisit the subject again. An attempt will be made to obtain a signature from the client, 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 client, guardian, foster parent, foster care worker or parent of a minor is not successful and/or the reason for the client, 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 Direction and the assigned clinician. Documentation will be made by the clinician in the client record the clinical reasons for the client, 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 client to proceed with treatment. Collaboration between the Record Review Committee, Utilization Management and the Corporate Compliance Program during routine record reviews will ensure the appropriateness of the explanation and documentation.

The clinician will explain the implications of treatment to the client, 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 client, 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.

MINORS

A minor, 14 years of age or older, may request and receive behavioral health services and a behavioral health professional may provide services on an outpatient basis (excluding pregnancy termination referral services and uses of psychotropic drugs) without the consent or knowledge of the minor's parent, guardian, foster parent, foster care worker, or person in loco parentis [MHC 1707(1)/RR Standard B7].

Consent for mental health evaluations and treatment can be provided without seeking formal parental consent. Either the child's foster parent or foster care worker (or agency delegate) can provide consent for these services.

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.

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.

The minor's parent, guardian, foster parent, foster care worker or person in loco parentis shall not be 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.

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)/RR Standard B10].

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.

PSYCHIATRIST/NURSE

The psychiatrist or nurse explains the medication(s) (type, dose, symptoms that the medication(s) treats, benefits to be reasonably expected, side effects and toxic effects of any/all prescriptions). He or she provides an appropriate medication information sheet when applicable.

The psychiatrist/nurse documents any special information that the client should be made aware of. The psychiatrist or nurse witnesses the client signing the Drug Consent Form, then also signs and dates the form. See Informed Consent for Medication Treatment Forms. Consents are considered valid for twelve (12) months unless revoked.

When there has been a change in a client's medication(s), the psychiatrist or nurse again explains the new medication(s) (type, dose, symptoms that the medication(s) treats, benefits to be reasonably expected, side effects and toxic effects of any/all prescriptions).

When the psychiatrist determines that a child in foster care requires psychotropic medication treatment, the prescribing psychiatrist must obtain a written and signed informed consent from the child's birth parent or other legal guardian before treatment with any psychotropic medication begins. Foster care parents cannot consent to administration of psychotropic medication.

REFERENCES

BCCMHA
CARF
Department of Health and Human Services
Michigan Mental Health Code

Center for Medicare & Medicaid Services
Office of Recipient Rights
MSA Bulletin 1259-EPSDT

ATTACHMENTS

MDHHS-5515_Consent_to_Share_Behavioral_Health_Information_613787_7.dot
10-C Consent form attachment.pdf
10-C Telepsychiatry Informed Consent attachment.pdf

APPROVED BY:

Richard Thiemkey Date
Executive Director