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| Community Mental Health Partnership of Southeast Michigan/PIHP | <i>Policy and Procedure</i> <i>Consent to Treatment and Services</i> |
| Department: Recipient Rights Author: Shane Ray | Local Policy Number (if used) |
| Regional Operations Committee Approval Date 4/16/2020 | Implementation Date 5/15/2020 |

I. PURPOSE

The purpose of this policy is to establish guidelines which ensure that recipients receive notification of their rights, and that informed consent is obtained for all services provided.

II. REVISION HISTORY

| DATE | REV. NO. | MODIFICATION |
|-------------|-----------------|-------------------------------------|
| 4/20/10 | 1.0 | Full policy revision |
| 4/11/13 | 1.1 | Template updated |
| 1/13/17 | 1.2 | Template Updated |
| 2/13/20 | 1.3 | 3-year review No Content Changes |
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III. APPLICATION

This policy applies to all staff, students, volunteers, and contractual organizations receiving any funding directly or sub-contractually, within the provider network of the Community Mental Health Partnership of Southeast Michigan (CMHPSM).

IV. POLICY

It is the policy of the CMHPSM that informed consent shall be obtained, as defined in this policy, prior to the provision of services.

V. DEFINITIONS

Community Mental Health Partnership Of Southeast Michigan (CMHPSM): The Regional Entity that serves as the PIHP for Lenawee, Livingston, Monroe and Washtenaw for mental health, developmental disabilities, and substance use disorder services.

Community Mental Health Services Program (CMHSP): A program operated under chapter 2 of the Mental Health Code as a county community mental health agency, a community mental health authority, or a community mental health organization.

Competency: The legal capacity of an individual to provide informed consent. An adult recipient shall be considered competent unless a court has determined that the recipient is not competent or is legally incapacitated and has been appointed a legal representative. If a legal representative has been appointed, the recipient shall be presumed competent regarding matters that are not within the legal representative's scope and authority.

Comprehension: The ability to understand the personal implications of providing consent, based on the basic information that has been provided.

Consent: Consent is defined as either of the following:

1. A written agreement signed by a recipient, unless the recipient has a designated legal representative with authority to execute consent. If the recipient has a designated legal representative, the legal representative must provide written agreement.
2. A verbal agreement of a recipient, unless the recipient has a designated legal representative with authority to execute a consent, that is witnessed and documented by an individual other than the individual providing treatment. If the recipient has a designated legal representative, the legal representative must provide verbal agreement.

Additionally, consent must include the elements of competency, comprehension, knowledge, and voluntariness.

Knowledge: Possession of the basic information needed to consent to services, including an understanding of the services being proposed, as well as the risks, benefits, consequences and other relevant information of consenting to those services.

Legal Representative: A legal representative is defined as any of the following:

1. A court-appointed guardian,
2. A parent with legal custody of a minor recipient,
3. In the case of a deceased recipient, the executor of the estate or court appointed personal representative,
4. A patient advocate under a durable power of attorney or other advanced directive.

Regional Entity: The entity established under section 204b of the Michigan Mental Health Code to provide specialty services and supports.

Rights: Protections for recipients of mental health services as defined by state and federal laws and agency policy.

Voluntariness: The ability to provide informed consent without force, fraud, deceit, duress or coercion, with the understanding that consent can be withdrawn at any time without prejudice.

VI. STANDARDS

A. All applicants and their legal representatives shall be notified of their rights as recipients of mental health services. This shall be done at the time services are first requested, and annually thereafter, by providing each applicant, recipient and legal representative with a copy of the Your Rights brochure, the Bill of Rights and Responsibilities brochure, the HIPAA Privacy Notice, and the Person Centered Planning brochure, and by having a complete copy of Chapters 7 and 7a of the Mental Health Code available for review at each service site.

B. Informed consent shall be obtained prior to:

1. Providing mental health services to a recipient,
2. Providing a prescription for psychotropic medication to a recipient,

- 3. Disclosing confidential information which requires consent,
 - 4. Photographing, recording, or using one-way glass to observe a recipient.
- C. Informed consent for services shall be obtained at least annually, or sooner if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.
- D. Exceptions to this policy are:
- 1. Civil Commitment Assessments
 - 2. Court ordered treatment
 - 3. Emergency Services Procedures

Applicants for, or recipients of services provided under exceptions 1-3 above shall be informed regarding the services to be provided, but written informed consent is not required.

- E. Applicants/recipients and their legal representatives shall be given the following information at the time of the request for services:
- 1. A description of services and their purpose,
 - 2. Risks, benefits, and other consequences reasonably to be expected,
 - 3. A disclosure of appropriate alternatives advantageous to the recipient,
 - 4. An offer to answer further questions.
- F. Consent to service participation is voluntary. The consenting individual is free to withdraw consent and discontinue participation in services at any time without prejudice to the recipient.
- G. The ability of each applicant or recipient to give informed consent shall be evaluated and shall precede any guardianship proceedings.
- H. A minor who is fourteen years of age or older may request and receive mental health services, and a mental health professional may provide such 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 unless there is a compelling need for disclosure based on a substantial probability of harm to the minor or another individual, and if the minor is notified of the mental health professional's intent to disclose. These outpatient sessions shall be limited to not more than twelve sessions or four months for each request for services. After that time, the mental health professional shall terminate the services or, with the consent of the minor, shall notify the parent, guardian, or person in loco parentis to obtain consent to provide further outpatient services.

VII. EXHIBITS

None

VIII. REFERENCES

| Reference: | Check if applies: | Standard Numbers: |
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| Michigan Mental Health Code, Public Act 258 of 1974, as amended | x | 330.1100a (19); 330.1706, 330.1707 |
| MDHHS Administrative Rules | x | 330.7003; 330.7011 |
| CMHPSM Policy: <u>Confidentiality and Access to Clinical Records</u> | x | |
| CMHPSM Policy: <u>Customer Services</u> | x | |
| CMHPSM Policy: <u>Fingerprints, Photographs, Recordings, or Use of 1-Way Glass</u> | x | |
| CMHPSM Policy: <u>Psychotropic Medication Orders and Consents</u> | x | |
| CMHPSM Policy: <u>Services Suited to Condition</u> | x | |

IX. PROCEDURES

A. Notification of Rights

| WHO | DOES WHAT |
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| Assigned Program Staff | <ol style="list-style-type: none"> 1) Gives the applicant/recipient and legal representative a copy of the Your Rights brochure, the Bill of Rights and Responsibilities brochure, the Person Centered Planning brochure, and HIPAA Privacy Notice at the initial request for service, and annually thereafter. Documents this in the clinical record. 2) Provides a brief verbal explanation of the brochures as well as a description of the Rights Procedures. 3) Asks the applicant/recipient/legal representative to review the Your Rights brochure. 4) Reiterates the content of the brochures in accordance with the applicant/recipient/legal representative's ability to comprehend, if the individual(s) appear to be: <ol style="list-style-type: none"> a) Illiterate b) A person with an intellectual/developmental disability. c) Non-English speaking (verbal explanation should be in a language that the individual(s) understand and may be delayed until a translator is available). d) Blind (the information shall be read to the individual(s)). e) Hearing impaired (the information shall be communicated in an understandable manner, |

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| | <p>or may be delayed until a qualified translator is available).</p> <p>f) Emotionally upset (the verbal explanation may be delayed until a more clinically suitable time, if, because of emotional status, the individual is unable to comprehend or is non-receptive to the explanation. The delay should be for a period of no more than two (2) weeks from the time of consent).</p> <p>5) Documents in the clinical record if the applicant/recipient/legal representative is assisted in reading or understanding the brochures.</p> |
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B. Informed Consent to Services

| WHO | DOES WHAT |
|------------------------|---|
| Assigned Program Staff | <ol style="list-style-type: none"> 1) Provides a verbal explanation of services, risks, benefits, other consequences, and provides other relevant information to the applicant/recipient/legal representative. 2) Evaluates the applicant/recipient's ability to give informed consent based on the individual's ability to understand the explanation of services, risks, benefits, other consequences, and other relevant information. Informs supervisor/manager if individual appears to lack the ability to give consent. If further evaluation confirms an inability to make a decision or to rationally understand a situation, as required for informed consent, the supervisor/manager will take administrative action to ensure the individual's rights are protected and appropriate services are made available. This shall include a determination as to whether guardianship proceedings should be considered. 3) Ensures that services being consented to are accurately documented on the Service Participation Consent form. 4) Assists consenting individual with completing and signing the Service Participation Consent form at the initial request for services, prior to implementing any services, and annually thereafter. Gives applicant/recipient/legal representative a copy of the signed Service Participation Consent form. |

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| | <p>5) If consent is being given verbally, obtains verbal consent from consenting individual and documents on the Service Participation Consent form. Ensures that verbal consent is also witnessed and documented by a non-treating individual.</p> |
| Consenting Individual | <p>1) If consenting in writing, signs Service Participation Consent form.</p> <p>2) If consenting verbally, verbally consents to services to the assigned program staff and second non-treating witness.</p> |
| Additional non-treating staff | <p>1) Witnesses verbal consent given by consenting individual to the assigned program staff.</p> <p>2) Documents witnessed consent on Service Participation Consent form.</p> |