

COPPER COUNTRY MENTAL HEALTH SERVICES BOARD

POLICY AND PROCEDURE

DATE: October 31, 2018 CONSENT.P4

RESCINDS: July 31, 2013

CATEGORY: Client Services

SUBJECT: Consent

POLICY: It is the policy of Copper Country Mental Health Services (CCMHS) Board that, except under life-threatening, emergency conditions, a written informed consent shall be obtained from a person served, from an empowered guardian or from the parent of a minor prior to: providing service; a substantial change in treatment which affects the risks or other consequences of treatment; providing medical services; chemotherapy; use of restrictive techniques; releasing or obtaining confidential information; and as required according to other Agency Policies and Procedures.

PURPOSE: To define the elements of informed consent, and establish procedures for evaluating comprehension, ensuring disclosure of relevant information and voluntariness before obtaining consent, and to define a mechanism for determining whether guardianship proceedings should be initiated, when an individual's capability to provide informed consent is in question.

PROCEDURE:

I. Elements of Informed Consent.

- A. Legal competency: A person served who is an adult, and a minor when state law allows consent by a minor, shall be presumed 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.
- B. Knowledge: To consent, a person served or legal representative must have basic information about the procedure, risks, and other related consequences, and other relevant information. The standard governing required

disclosure by a service provider is what a reasonable individual needs to know in order to make an informed decision. Other relevant information includes all of the following:

1. The purpose of the procedures.
2. A description of the attendant discomforts, risks, and benefits that can reasonably be expected.
3. A disclosure of appropriate alternatives advantageous to the person served.
4. An offer to answer further inquiries.

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

D. 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 person served.

II. Informed consent shall be re-obtained if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.

III. A written agreement documenting an informed consent shall not include any exculpatory language through which the individual, or a person consenting on the individual's behalf, waives or appears to waive, a legal right, including a release of a provider or its agents from liability for negligence. The agreement shall embody the basic elements of informed consent in the particular context. The individual, guardian, or parent consenting shall be given adequate opportunity to read the document before signing it. The requirement of a written consent shall not eliminate, where essential to the individual's understanding or otherwise deemed advisable, a reading of the document to the individual or an oral explanation in a language the individual understands. A note of the explanation and who made it shall be placed in the record along with the written consent.

IV. A consent is executed when it is signed by the appropriate individual.

V. An evaluation of an individual's ability to give consent shall precede any guardianship proceedings.

- VI. When there is a question as to an individual's capability to provide informed consent, the Program Director of the program in which the individual is receiving services shall be so informed.
- A. The Program Director shall review the available information.
1. On concurring that the individual lacks the ability to give informed consent, he/she shall direct the petition process for the individual.
 2. When there is a lack of agreement as to the individual's ability to give informed consent, the issue is documented and referred to the Executive Director or designee.
 3. The Executive Director or designee reviews the available information and may request additional evaluations and either: direct a petition for guardianship be initiated; or convene an Informed Consent Board as detailed in Administrative Rule 330.6013.

VII. Rights of a minor to consent:

- A. A minor 14 years of age or older may request and receive mental health services, and a mental health professional 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 the 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 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.

VIII. The written informed consent shall:

- A. Specify the expiration date. No written informed consent shall remain in effect longer than twelve (12) months.

1. The consent will automatically expire when the purpose for which it was obtained has been achieved.
 - B. Not contain language which states or implies a waiver of Agency liability or any other legal right by the person giving the consent.
 - C. Be read or explained to the person giving consent, in language he/she can understand. The person giving consent shall be given ample time to read the document, to ask questions, and to fully understand the content.
 - D. Be obtained without intervention of any element of force, fraud, deceit, duress, overreaching or other ulterior form of constraint or coercion, including promises or assurances of freedom or privileges.
 - E. Include instruction that the individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the person served.
 - F. Be filed in the individual's clinical record.
- IX. If a person served verbally agrees to participate in a treatment program and voluntarily participates in any recommended treatment program, but refuses to sign a Consent form, clinical services will not be denied. It should be documented on the Consent form both the individual's refusal to sign the Consent form, and their verbal agreement to participate in treatment. Regular attempts to encourage the person served to sign the Consent form should be documented as the treatment relationship develops.
- X. Refusal or withdrawal of written informed consent shall be documented in the individual's clinical file.

APPLICATION: All programs.

CROSS REFERENCE:

CCMHS Policy - Guardianship

CCMHS Policy - Informed Consent to Psychotropic Chemotherapy

CCMHS Policy - Use & Release of Protected Health Information

CCMHS Policy - Recipient Rights Specific to Recipients Receiving
Integrated Treatment for Co-Occurring Disorders

CCMHS Policy - Photographing and Fingerprinting Recipients

CCMHS Policy - Behavioral Treatment Committee

Mental Health Code Section 707

Administrative Rules 330.6013, 330.7003