

# HIAWATHA BEHAVIORAL HEALTH BOARD

## Administrative Policy

Chapter: Recipient Rights  
Section: Informed Consent (6.10)  
Approved: 05/17/04  
Rescinds: 6.10 - Dated 5/14/01  
Review Committee: Recipient Rights Advisory Committee  
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### I. Purpose

To establish policies and procedures regarding informed consent of recipients.

### II. Policy

It is the policy of the Hiawatha Behavioral Health Authority that except under life threatening, or emergency conditions, a written informed consent shall be obtained from a recipient, the legally authorized representative or guardian with authority to consent prior to the provision of services.

### III. Definitions

Advocate: One who pleads another's cause or in support of something.

Comprehension: An individual must be able to understand what the personal implications of providing consent will be based upon the information provided under subsection (b).

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, that assumes competency, knowledge, and voluntariness.

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

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

Legal Competency: An individual shall be presumed to be legally competent. This 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.

Legally Empowered Guardian / Legally Authorized Representative: A person empowered to execute a consent in accordance to a Probate Court order.

Minor: Any person under legal age (USA legal age is 18 years).

Partial Guardian: A guardian who possesses fewer than all of the legal rights and powers of a plenary guardian, and whose rights, powers, and duties have been specified by a court order.

Plenary Guardian: A guardian who possesses the legal rights and powers of a full guardian of the person, or of the estate, or both.

Voluntariness: Brought about by one's own free choice; acting of one's own accord; intentional, not accidental; controlled by one's mind or will. 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.

#### IV. Procedure

A. Consent means written informed approval on the part of the recipient, legally empowered guardian, or parent with legal custody of the minor recipient. Except as otherwise stated in the Michigan Mental Health Code Section 330.1707 a consent must be a written voluntary agreement. The primary clinician shall:

1. Obtain physical, medical, social, psychological, psychiatric, or other evaluations previously done outside the Agency;
2. Obtain any court and / or legal documents from the court of record, as applicable.
3. Obtain all consent forms to gather information specific to what is requested and the purpose for which it is requested.
4. Ensure that consent forms include date consent is given and date of expiration.

5. The Hiawatha Behavioral Health "Release of Confidential Information" form shall be used for this purpose.

6. A consent shall be executed when it is signed by the appropriate individual.

a. If further information is necessary after a recipient has been accepted for services, the same procedure shall be followed.

B. A recipient over the age of 18 is presumed to be legally competent to give or refuse consent unless a plenary guardian of the person, or of the estate and of the person, or a partial guardian has been appointed for a person and the duration of the term of guardianship indicated in the court order has not expired.

C. A minor 14 years of age or older may request and receive mental health services on a confidential outpatient basis. This excludes pregnancy termination referral services and the use of psychotropic medication. Except as otherwise provided under the Michigan Mental Health Code section 330.1707.

D. The minor's parent with legal custody, guardian or person in loco parentis shall not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial probability of harm to the minor or to another individual, and if the minor is notified of the treating professional's intent to inform the minor's parent with legal custody or guardian.

E. Service provided to the minor shall be limited to not more than 12 sessions or 4 months per request and after expiration, the mental health professional shall terminate the services or, with the consent of the minor, notify the parent, guardian, or person in loco parentis to obtain consent to provide further outpatient services.

#### CONSENT FOR TREATMENT: WRITTEN / VERBAL:

A. When a recipient has been accepted for service, or during the course of treatment, written informed consent is required, but not necessarily limited to, the following:

1. Emergency medical services:

a. Verbal emergency informed consent may be given in place of written consent.

b. Verbal consent shall be witnessed by two people who then sign the consent form.

c. Written informed consent by the person, legally empowered guardian, or parent with legal custody of a minor, shall still be sought to substantiate the verbal consent and shall be received within 10 days.

2. Psychopharmacology (Chemotherapy);

3. Medication administration;

4. Release of information;

5. Use of Certified Non-Physical/Physical Intervention Techniques as stated in the Individual Plan of Services;
6. Non-emergency surgery or other medical procedures not related to care and treatment for a person's mental condition;
7. Financial matters, including payment for services and securing insurance and governmental benefits;
8. Use of one way glass.
9. Use of audio-visual equipment or audio-visual reproduction of voice or image, or conference-speaker call.

B. If a recipient verbally agrees to participate in a treatment program or voluntarily participates in any recommended treatment program, but refuses to sign the Individual Plan of Services or consent form, clinical services shall not be denied. The primary clinician should document on the consent form both the recipient's refusal to sign the consent form, and his/her verbal agreement to participate in treatment. Regular attempts to encourage the recipient to sign the consent form should be documented as the treatment relationship develops.

C. Informed consent shall be obtained/re-obtained no less than annually or as:

1. The person centered plan is developed;
2. Medication is prescribed;
3. Changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.

D. The recipient, legally empowered guardian, or parent with legal custody of a minor will be informed that he/she is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient, unless services are ordered by the court.

E. Refusal or withdrawal of written informed consent shall be documented in the recipient's case record.

F. The written informed consent shall:

1. Be executed when it is signed by the appropriate individual.
2. Specify the expiration date. No written informed consent shall remain in effect longer than 12 months.
3. The consent will automatically expire when the purpose for which it was obtained has been achieved.
4. Not contain language which states or implies a waiver of agency liability or any other legal right including a release of a provider or its agents from liability for negligence.
5. Be read or interpreted to the person giving consent, in a language he/she can understand. The person giving consent shall be given ample time to read, have read to them, or communicated to them by whatever means necessary, the

document, to ask questions, and to fully understand the content. A note of the explanation and by whom made, shall be placed into the case record, along with the written consent.

6. 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.

7. Include instruction that the individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient.

8. Be filed in the recipient's clinical case record.

#### INFORMED CONSENT BOARD:

If a recipient's primary clinician or any member of the planning team suspects that a recipient is not capable of making a decision regarding informed consent and if the Program Manager or designee determines that the staff members conclusion is of substantial weight, he/she shall convene an Informed Consent Board.

A. If a recipient's primary clinician or another member of the planning team suspects that the recipient is not capable of making an informed decision or providing informed consent, the primary clinician shall document the written statements shall include reasons for the conclusions.

B. An Informed Consent Board will be appointed by the Program Manager or designee to evaluate the person's capacity to give or refuse to give the required informed consent.

1. The Informed Consent Board will be appointed on a case-by-case basis and shall consist of the following:

a. Two mental health professionals of different disciplines with the appropriate clinical experience or training;

b. A third person who is not employed by Hiawatha Behavioral Health, but who is selected by the Program Manager or designee as a qualified advocate with an interest in mental health, developmental disabilities, mental illness, or serious emotional disturbances and/or advocacy.

c. One member of the Informed Consent Board shall have had prior clinical contact with the person, but Board members shall not have been involved in either the action or application for which consent is needed or the decision to evaluate the need for guardianship proceedings.

C. The Informed Consent Board shall evaluate the capacity of the person to make a decision regarding consent by interviewing the person and other appropriate persons and by evaluating available clinical records and test results.

D. Within ten business days, the Informed Consent Board shall submit a written report to the Program Manager which states the Board's findings, the person's desires in the matter. When possible, a conclusion whether the consent or refusal is or will be informed and the Board's recommendation. A parent or a responsible relative, a previously appointed

current partial guardian, or other interested person shall be notified by the primary clinician of a determination that a person cannot give an informed consent.

1. If a majority of the Board concludes that informed consent is absent because a person does not have sufficient information or because a decision is not voluntary, the Chief Executive Officer or designee shall cause the person to be provided with the necessary information or an opportunity for voluntary choice.
2. If the majority of the Board concludes that a person can give or has given an informed consent or has the capacity to give an informed consent and has refused to do so, the Program Manager or designee shall be authorized to act accordingly.
3. A copy of the Informed Consent Board's report shall be placed in the recipient's case record.

E. If the Informed Consent Board recommends that guardianship proceedings be commenced, the primary clinician shall notify appropriate persons and/or begin the petition process in accordance with Part Six of the Department of Community Health Administrative Rules, "Guardianship for Recipients of Mental Health Services".

#### Informed Consent Board Guidelines:

The controversial subject of competency and/or guardianship is one that presents extreme consequences for each individual in question. Guardianship shall be utilized only as is necessary to promote and protect the well-being of the individual and shall be designed to encourage the development of maximum self-reliance and independence in the individual. It should be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations. The Informed Consent Board is a part of the guardianship process. It serves the purpose of evaluating an individual's ability to give or refuse to give informed consent.

The Informed Consent Board is to preserve the rights of each individual to his/her greatest extent. It is with this crucial philosophy in mind that we explain the structure and responsibility of the Informed Consent Board. The Hiawatha Behavioral Health Informed Consent Board shall be appointed by the Program Manager or designee on a case-by-case basis when needed. Each Informed Consent Board consists of two mental health professionals of different disciplines with appropriate clinical experience and training. One of these professionals shall be employed through Hiawatha Behavior Health. The other member shall be a qualified individual with an interest in mental health advocacy and services. One Informed Consent Board member shall have had prior contact with an individual whose ability to give informed consent is at issue. No Informed Consent Board member shall be involved in either the action or the application for which consent is needed. Also, no Informed Consent Board member shall be involved in the decision to evaluate the need for guardianship proceedings. The Informed Consent Board shall act as an intra-agency function to evaluate the capacity of an individual to give or refuse to give the required informed consent by interviewing an individual and other appropriate

individuals, and by evaluating available clinical records and test results. The Informed Consent Board shall have additional mental, physical, social, or educational evaluations that it needs to determine the capacity for informed consent as well as to determine the need of the protective services of a minor approaching age 18. The Informed Consent Board will operate by majority rule. Further, the Informed Consent Board shall submit a written report stating facts of findings, an individual's desires in the matter where possible, a conclusion whether the consent or refusal is, or will be, informed, its recommendations, and the extent of the informed consent. The report will be authored by the primary clinician based on the completion of the summary of recommendations for guardianship.

V. Application

All Programs Operated By and Under Contract With Hiawatha Behavioral Health Authority

IV. Cross Reference and Legal Authority

A. Act 258 of the Public Acts of 1974, as amended, - Mental Health Code - Sections 330.1100a, 330.1716, 330.1717, 330.1719, 330.1724 330.1748.

B. Department of Community Health Administrative Rules - R - 330.7003.