HIAWATHA BEHAVIORAL HEALTH
Administrative Policy

CHAPTER: Recipient Rights	SECTION: Informed Consent – 6.10
EFFECTIVE DATE: 5/14/01	APPROVAL /REVISED DATE: 2/27/19
REVIEW DATE: 2/23/2026	REVIEW COMMITTEE: Recipient Rights Advisory Committee Changes: Yes: No: X

I. Purpose:

To establish policies and procedures regarding informed consent for all services.

II. Policy:

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

III. Definitions:

A. Comprehension: An individual must be able to understand the personal implications of providing consent. In order to determine whether or not a person understands the consequences of providing consent, the following procedure is to be followed in which the person will be asked to demonstrate understanding in the following areas:
   1. The purpose of the procedure/medication being proposed
   2. Possible side effects and discomforts associated with the procedure or medication
   3. The potential benefits of the procedure/medication
   4. The risks involved
   5. Any alternatives to the procedure/medication
   6. Risks that are associated with not performing the procedure or prescribing the medication

B. Consent: Is defined as any 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 also provide verbal agreement.
   3. Additionally, consent must include the elements of competency, comprehension, knowledge, and voluntariness.

C. Knowledge: To consent, a recipient or legal representative must have basic understanding about the procedure, risks, benefits, 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:

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 recipient.
4. An offer to answer further inquiries.

D. In loco Parentis: "In the place of a parent." Acting as a temporary guardian of a child.

E. Legal Competency: An individual shall be presumed to be legally competent. This may be rebutted only by a court appointment of a guardian or exercised by a court with 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.

1. Minors age 14 years or older may apply and receive time limited mental health services without the knowledge or consent of their parents or Guardian as stated in the Michigan Mental Health Code Section 330.1707 (Rights of a Minor) A legally emancipated minor shall be presumed to be legally competent and able to consent to mental health services.
2. In all other circumstances consent must be obtained from the parent with legal custody of the minor or a legally empowered representative of the minor. Parents shall be presumed to have legal custody of a minor child however, for minors who present with parents who are divorced; a Divorce Decree must be obtained designating at least one of the parents as having legal custody of the minor. In the event the court has granted joint legal custody, either parent has the authority to consent. Likewise, for unmarried parents not residing together, a custody order of paternity or other legal documentation of custodial status is required to determine authority to consent.
3. In lieu of a parent's authority, consent may be obtained from another individual acting in loco parentis through an officially executed Power of Attorney, a valid Guardianship Order, or other Court Order designating the Court, the Michigan Department of Health and Human Services or its designee as having care, custody and control of the minor.
    a. Documentation of any of the authorities must be obtained and reviewed by Hiawatha Behavioral Health Medical Records to verify the minor's legal status and the scope of the Court-Ordered or delegated decision making authority.
    b. The documentation shall be maintained in the recipient's electronic medical record.

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

1. A court appointed guardian
2. A parent whose parental rights have not been terminated
3. In the case of a deceased recipient, the Executor of the recipient's estate or a court appointed personal representative.

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

H. 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.
I. Plenary Guardian: A guardian who possesses the legal rights and powers of a full guardian of the person, or of the estate, or both.
J. 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. Additionally, voluntariness is superseded when treatment has been mandated through Probate, District, or Circuit Court Order.

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 (Rights of a Minor) a consent must be a written voluntary agreement. Hiawatha Behavioral Health 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 includes the date consent is given.
    5. The Hiawatha Behavioral Health "Authorization to Release Information (ROI)" 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 18 years or older is presumed to be legally competent to give or refuse consent unless a plenary guardian with the authority to execute consent 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.
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. Services provided to the minor, to the extent possible, promote

the minor relationship to the parent, guardian, or person in loco parentis has sought to instill in the minor.

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. The minor's parent, guardian, or person in loco parentis is not liable for the cost of the services that are received by the minor.

V. 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 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 also provide verbal agreement.
      b. 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. Non-emergency surgery or other medical procedures not related to care and treatment for a person's mental condition;
   6. Financial matters, including payment for services and securing insurance and governmental benefits;
   7. Use of one-way glass.
   8. 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 when:
   1. A new person centered plan or Individual Plan of Services, (IPOS), is developed,
   2. A new medication is prescribed;
   3. Changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.

D. In all circumstances consent must be obtained from the parent with legal custody of a minor or a legally empowered representative of the minor. Parents shall be presumed to

have custody of a minor child however, for minors who present for mental health services with parents who are divorced; a Divorce Decree must be obtained designating at least one of the parents as having legal custody of the minor. In the event the court has granted joint legal custody, either parent has the authority to consent to services. Likewise, for unmarried parents not residing together, a Custody Order of Paternity or other legal documentation of custodial status is required to determine exactly who has authority to consent.

E. In lieu of a Parent's authority, consent may be obtained from another individual acting through an officially executed Power of Attorney Over minor Child, a valid Guardianship Order, or other Court Order designating the Court, the Michigan Department of Health and Human Services or its Designee (person in Loco Parentis as having care, custody and control of the minor.

F. Documentation of any authorities must be obtained and reviewed by HBH Medical Records to verify the minor's legal status and the scope of the Court-Ordered or delegated decision making authority.
   - Parents of a minor who are not married; whichever parent is involved with the minor's mental health services must present documents indicating who the parent is or evidence to support their authority to consent.
     - ✓ Documents needed may include the minor's birth certificate and proof of parental rights such as a valid picture identification card, Drivers' License.
   - All documents obtained for the purpose of verifying the individual's authority to consent shall me maintained in the recipient's electronic medical record.

G. Individuals are informed prior to the initial intake appointment to provide the necessary documentation and encouraged to provide this information at the first appointment in order for the determination of authority to consent to be made.

H. 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.
   1. An individual receiving services under a Deferral Agreement shall be treated as a voluntary recipient and shall be asked to consent. If the individual refuses to consent or requests a hearing, either orally or in writing, he/she will be advised that treatment must end and that Hiawatha Behavioral Health is obligated by law to report to the Court to convene a Hearing pursuant to MI Mental Health Code 330.1455(8).
   2. An individual adjudicated as a person requiring treatment as ordered by a recognized court order, Alternative Treatment Order, (ATO) shall also be given the opportunity to consent. If the individual under ATO refuses to consent to treatment set forth in the Court's Order and/or if it is determined that that the ATO has not or will to be sufficient to prevent harm to the recipient or other, the individual shall be advised that Hiawatha Behavioral Health is obligated by law to notify the court of record pursuant to MI Mental Health Code 330.1475(1).

I. Refusal or withdrawal of written informed consent shall be documented in the recipient's electronic medical record.

J. The written informed consent shall:
   1. Be executed when it is signed by the appropriate individual.

2. Specify the expiration date. With exception of consent for psychotropic medication, no written informed consent shall remain in effect longer than 12 months.
    - Medication consent shall be obtained initially then if / when new medications are prescribed and / or when a recipient's legal status changes.
3. The consent will automatically expire when the purpose for which it was obtained has been achieved and medication deemed no longer needed as recommended by a licensed, credentialed medical professional.
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 electronic medical 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 electronic medical record.

VI. Determination of Comprehension, Knowledge and Voluntariness:

If the mental health professional doubts the recipient's ability to provide informed consent, the mental health professional shall consult with their immediate supervisor. Other clinical and medical professionals involved with the recipient will be consulted as necessary. If as a result of this consultation there is a reasonable cause to believe that the recipient's ability to give informed consent is in question, the assigned clinician shall ensure evaluation is obtained. Evaluation shall precede any guardianship proceedings.

VII. Application:

All programs operated by and under contract with Hiawatha Behavioral Health

VIII. Cross Reference and Legal Authority:

A. Act 258 of the Public Acts of 1974, as amended, - Mental Health Code - Sections 330.1100a, 330.1707, 330.1716, 330.1717, 330.1719, 330.1724, 330.1748, Chapter 6.
B. Michigan Department of Health and Human Services Administrative Rules - 330.7003