

# **ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH AUTHORITY**

## **ADMINISTRATIVE PROCEDURE**

**Issued Date 03/24**

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<b>CHAPTER</b> Recipient Rights	<b>CHAPTER</b> 05	<b>SECTION</b> 002	<b>SUBJECT</b> 0006
<b>SECTION</b> Recipient Rights	<b>SUBJECT</b> Informed Consent, Consent for Treatment, and Information Distribution		
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### **I. APPLICATION:**

- ☐ SCCCMHA Board
- ☒ SCCCMHA Provider & Sub-Contractors
- ☒ Direct Operated Programs
- ☒ Community Agency Contractors
- ☒ Residential Programs
- ☒ Specialized Foster Care

### **II. PURPOSE STATEMENT:**

St. Clair County Community Mental Health Authority (SCCCMHA) will ensure informed consent has been verified, consent for treatment has been obtained, and certain information has been distributed to individuals/guardians at admission and annually thereafter.

### **III. DEFINITIONS:**

- A. Consent: A written agreement executed by a recipient, a minor recipient's parent, a recipient's legal representative with authority to execute a consent, or a full or limited guardian authorized under the estates and protected individual's code, 1998 PA 386, MCL 700.1101 to 700.8206, with the authority to consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.
- B. Informed Consent: As defined by MDHHS Administrative Rule 330.7003, all of the following are elements of informed consent:
  - 1. Legal Competency: An individual shall be presumed to be 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.
  - 2. Knowledge: To consent, a recipient or legal representative must have basic information about the procedures, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a competent person needs to know in order to make an informed decision. Other relevant information includes all of 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.
- 3. Comprehension: An individual must be able to understand what the personal implications of providing consent will be based upon the information provided under Item E.2.
- 4. 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 recipient.
- C. Office of Recipient Rights (ORR): The Office created by the Michigan Mental Health Code that is subordinate only to the Executive Director/Chief Executive Officer and that is responsible for investigating, resolving, and assuring remediation of apparent or suspected recipient rights violations, and assuring that mental health services are provided in a manner that respects and promotes the rights of recipients as guaranteed by Chapters 7 and 7A of the Michigan Mental Health Code, P.A. 258 of 1974.
- D. Person in Loco Parentis: A person who is not the parent or guardian of a minor, but who has either legal custody of a minor or physical custody of a minor and is providing support and care for the minor.
- E. Recipient: An individual who receives mental health services from the Michigan Department of Health and Human Services (MDHHS), a community mental health services program, or a facility, or from a provider that is under contract with the MDHHS or a community mental health services program.

#### IV. STANDARDS:

- A. All applicants and recipients (and/or their guardians) must have the consent process explained to them upon entry into the system, annually thereafter, and as appropriate throughout the year. This includes being provided with the “Your Rights” booklet/notification of rights (for mental health services) and/or the “Know Your Rights” brochure (for substance use disorder services program services).
- B. Any items on the Consent for Treatment document not covered due to clinical inappropriateness for staff or a recipient must be explained at a later date.
- C. Establishing and maintaining consent is an ongoing process and staff must continually keep a recipient/guardian informed throughout their/their ward’s course of treatment.
- D. The recipient/guardian must be provided with the name, telephone number, and address of the Office of Recipient Rights.
- E. If there is a question about the recipient's ability to provide informed consent, staff must obtain a concurrent or substitute consent and follow through with a review by the provider’s Behavior Treatment Plan Review Committee (see policy #[03-001-0060](#), Behavior Treatment Plan Review Committee).

- F. Consent shall be given only by the recipient, parent of a minor, or empowered guardian, or otherwise according to statute.
- G. All recipients who are 18 years of age and older, and who have not been adjudicated as incompetent, shall be considered able to give or to refuse to give informed consent.
- H. Consent for recipients under the age of 18 shall be sought from the parent, empowered guardian, or person in loco parentis.

NOTE: A minor, 14 years of age or older, may request and receive mental health services and a mental health professional may provide mental health 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.

Rights of a Minor: Services provided to a minor shall be limited to not more than 12 sessions or four (4) months per request for services. After the twelfth session or fourth month of services, 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 shall not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines 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 mental health professional's intent to inform the minor's parent, guardian, or person in loco parentis.

- I. The person giving consent shall be free to withdraw their consent at any time without penalty.
- J. Consent shall be re-obtained annually or when circumstances substantially change the risks, other consequences, or benefits that were previously expected, to include the appointment of a guardian or modification to a guardianship order.
- K. Consent is valid when it is signed by the recipient, the parent of a minor, or an empowered guardian.
- L. Adult recipients without a guardian who refuse to give consent for treatment, but who have received a complete explanation of the services and expectations, may receive services so long as these events are noted in their record and future attempts to obtain informed consent are made.

## V. PROCEDURES:

### **Central Intake Unit/Primary Case Manager**

1. Assesses a recipient's/guardian's ability to provide informed consent, and forwards the Treatment Team's opinion and recommendation to the Behavior Treatment Plan Review Committee, per policy [#03-001-0060](#), Behavior Treatment Plan/Review Committee.
2. Completes the mandatory Consent for Treatment document in OASIS with the recipient, or if a guardian has been appointed, the recipient's guardian, upon application for services, annually, and as appropriate throughout service provision.

3. Provides the individual and their guardian with the SCCCMHA “How We Help” brochure, Person-Centered Planning booklet, Privacy Notice brochure, and an Appeals brochure, along with the appropriate recipient rights booklet.
4. Explains at a later date any items on the Consent for Treatment document not covered due to clinical inappropriateness for staff or a recipient.
5. Makes arrangements to accommodate recipients that cannot read or hear and/or have some other handicap that impairs their ability to understand the necessary information.
6. Refusals by competent adults to give informed consent should be documented in their record.

**Recipient/Guardian**

7. Signs the Consent for Treatment document in OASIS (iPad touch screen or Signature Pad) or hand-signs paper form.

**Primary Case Manager**

8. Forwards any hard copy documents to Records Staff to be scanned/uploaded into OASIS.

**VI. REFERENCES:**

- A. Michigan Mental Health Code, P.A. 258 of 1974 as amended, Sections 330.1100a, 330.1498c, 330.1707, and 330.1748
- B. Michigan Department of Health and Human Services Administrative Rules, 330.7003
- C. Department of Licensing and Regulatory Affairs, Substance Use Disorder Services Programs, Licensing Rules R 325.1391 through R 325.1399

**VII. EXHIBITS:**

None

**VIII. REVISION HISTORY:**

Dates Issued: 08/86, 11/88, 07/91, 10/93, 02/94, 06/98, 07/00, 06/02, 06/04, 06/04, 6/06, 06/08, 06/10, 09/12, 11/12, 11/13, 11/14, 11/15, 11/16, 11/17, 11/18, 01/20, 01/21, 01/22, 01/23.