

The Right Door for Hope, Recovery, and Wellness

Chapter Title	Chapter #		Subject #
Recipient Rights	RR		111.1
Subject Title Informed Consent	Adopted 9/26/96	Last Revised 2/21/14	Reviewed 2/8/06; 3/2/10; 2/21/14; 1/4/17

PROCEDURE

Application

This procedure shall apply to The Right Door for Hope, Recovery, and Wellness and all services operated by or under contract with it. This procedure shall serve as a guide to assure compliance with Board policies regarding Recipient Rights.

1.0 Informed consent is defined as:

- 1.1 Comprehension: Requires the ability of the individual to understand the nature, risks, and consequences. An individual must be able to understand what the personal implications of providing consent will be.
- 1.2 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 patient needs to know in order to make an informed decision.
- 1.3 Voluntariness: Requires that the individual has free power of choice without an element of force, coercion, or promises and has a clear understanding that the consent may be withdrawn at any time without prejudice to the recipient.

2.0 Informed consent shall be obtained for the following conditions:

- 2.1 Participation in The Right Door for Hope, Recovery, and Wellness operated or independent contracted services.
- 2.2 Fingerprinting, photographing, audio/video recording, or use of one-way glass of consumers.
- 2.3 Disclosure of confidential information which requires consent.
- 2.4 Acceptance of medication.

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- 3.0 When requesting consent for any condition stated above, the consumer/guardian/parent will be made aware that consent is voluntary and freely given without force, fraud, deceit, duress, or coercion and that consent, if given, can be withdrawn at any time without prejudice. An explanation must be given to the consumer regarding the procedure or service to be provided. Such explanation must include procedures, purpose, risks, and benefits and an offer to answer further inquiries.
- 4.0 All consumers who are 18 years of age or older (12 years of age or older in substance abuse cases) and who have not been adjudicated as incompetent, shall be considered able to give or to refuse to give informed consent.
- 5.0 Consent shall be given only by the consumer, legal representative of a minor, or a minor 14 years of age or older (according to the Mental Health Code Section 330.1707), empowered guardian, or otherwise according to statute.
- 6.0 Consent for a consumer eighteen (18) years or older and legally incompetent shall be sought from the empowered legal representative.
- 7.0 The consent form shall be completely filled out prior to seeking the signature of the consumer, a minor's legal representative, or guardian.
- 8.0 The consumer, a minor's legal representative, or guardian providing the consent must be given the opportunity to carefully read the consent form before signing it.
- 9.0 A special oral explanation shall be provided to the consumer, a minor's legal representative, or guardian if the person providing consent is:
- 9.1 Not literate.
- 9.2 Developmentally disabled.

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- 9.3 Non-English speaking (the verbal explanation shall be in a language that the consumer understands and may be delayed until an interpreter is available).
- 9.4 Emotionally upset (the verbal explanation may be delayed until a more clinically appropriate time if the consumer is unable to comprehend the explanation at the time of admission).
- 9.5 Hearing impaired (explanation shall be communicated by a means that is understandable to the consumer and may be delayed until a qualified signer is available).
- 9.6 Sight impaired.
- 9.7 A minor (the verbal explanation should be simplified in accordance with the minor's ability to comprehend). The minor's legal representative shall also be given an explanation.

A note of the explanation which has been provided will be documented in the consumer's record and signed by the staff person who provided the explanation.

- 10.0 A court determination that a consumer meets the criteria for judicial admission or that a person required treatment (Mental Health Code Section 330.1401) shall not raise a presumption nor constitute a finding of legal incompetence.

A determination of the ability to make an informed consent shall be required prior to determining the need for guardianship and/or determining competency.

Concerns regarding the ability to make an informed consent shall be referred to the informed consent board. The informed consent board shall be appointed on an as needed basis according to applicable legal requirements.

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11.0 In order to assure the individual signing an informed consent has the legal authority necessary to execute such documents, a copy of the applicable document shall be placed in the consumer file.

Authorizing individuals for adults are defined as:

11.1 **Plenary (full) Guardianship:** A copy of the Letters of Authority will indicate the authority the Guardian has on behalf of the person. A Plenary Guardian has authority for all facets of consent. Extraordinary surgery or ECT are to be indicated in the Letters of Authority.

Notice: The Guardian should be aware in the event of a change in guardian, the ability to consent ceases including access to records.

11.2 **Partial Guardianship:** A copy of the Letters of Authority will indicate the authority the Partial Guardian has on behalf of the person. A Partial Guardianship is limited to only the authority indicated in the Letters including release of information.

Notice: The Guardian should be aware in the event of a change in guardian, the ability to consent ceases including access to records.

11.3 **Conservator:** A copy of the Court Order will indicate the individual has authority concerning financial matters only and has no ability to consent to treatment and/or access records.

Notice: The Conservator should be aware of the limitation to financial responsibilities only. Other action would be necessary in order to execute consent including releasing information.

11.4 **Representative Payee:** Representative Payee is a financial designation by a third party payer and has no ability to consent to treatment and/or access records.

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Notice: The Representative Payee should be aware of the limitation to financial responsibilities only. Other action would be necessary in order to execute consent including releasing information.

- 11.5 Court Ordered: Court initiated treatment for counseling, case management, and/or evaluation for a specific purpose as indicated in the court order.

Notice: The individual initiates all informed consents to communicate with court relative to the court order with the consent limited to items and/or time lines indicted in the order.

- 11.6 Durable Power of Attorney - Advanced Medical Directive: Areas of authority are specifically indicated in the document which may include financial, medical, and advance directives.

Notice: The Durable Power is limited to the powers indicated within the document and may be withdrawn by the named individual at any time.

- 11.7 Limited Power of Attorney: Areas of authority are specifically indicated in the document and usually include only medical matters.

Notice: The Durable Power is limited to the powers indicated within the document and may be withdrawn by the named individual at any time.

- 12.0 In order to assure the individual signing an informed consent has the legal authority necessary to execute such documents, a copy of the applicable document shall be in the consumer file for any child under the age of 18, or 12 in substance abuse cases, or 14 when the minor is seeking treatment according to MCLA 330.1707.

Authorizing individuals for children are defined as:

- 12.1 Parent: As defined by Michigan statutory law, "parents" means natural parents, if married prior or subsequent to the minor's birth;

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adopting parents if the minor has been legally adopted; or the mother, if the minor is illegitimate. 1968 PA293 1(b); MCLA 722.1(b); MSA 25.244(1)(b).

The United States Supreme Court has determined that a putative father of an illegitimate child is not cut off from his parental rights. "The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent of a powerful countervailing interest, protection...." 405US645,651;92S Ct1208, 1212:31 L Ed2d 551,558.

Notice: The parent authorizing consent should be made aware that both parents have the ability to consent and access records unless restricted by another area of law.

12.2 Joint Legal Custody: "Joint custody," in forms that have come to be distinguished as "legal" and "physical," is described in section 6a of the Child Custody Act, MCL 722.26a, MSA 25.312(6)(a), as follows:

As used in this section, "joint custody" means an order of the court in which one or both of the following is specified:

- (a) That the child shall reside alternately for specific periods with each of the parents.
- (b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

The form of the order specified in (a) has come to be referred to as "joint physical" while subpart (b) is called "joint legal custody".

Notice: Since mental health treatment is considered an important decision affecting the welfare of the child, it is assumed that the parent seeking services and/or consenting has shared the decision with the other parent. The parent authorizing should be made aware that both parents have the

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ability to consent and access records unless restricted by another area of law.

- 12.3 Sole Legal Custody: The Order of the court states that one individual is the sole person to make legal decisions.

Notice: In the event the court order shall change, access to records and/or consent may change.

- 12.4 Power of Attorney: Areas of authority are specifically indicated by the parent in the document and may include accessing treatment, as well as school, and/or financial information.

Notice: The Power of Attorney is limited to the powers indicated within the document and is valid for only a six month period of time. At that time the document expires or must be renewed by the parent. The individual holding the Power of Attorney should be aware that the parents of the child can withdraw the Power of Attorney at any time. It does not negate in any manner the parental ability to consent and/or access information.

- 12.5 Guardian: A copy of the Letters of Authority will indicate the authority the Guardian has on behalf of the person. A Plenary (full) Guardian has authority for all facets of consent.

Notice: The Guardian should be aware in the event of a change in guardian, the ability to consent ceases including access to records.

- 12.6 Person in Loco Parentis: Is defined as 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.

Notice: The Person in Loco Parentis should be aware that the parents of the child can exert the parental ability to consent and/or access information.

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- 12.7 Ward of the Court: The court has the authority and/or may indicate an individual to act on behalf of the court to consent during the duration of court supervision.

Notice: Upon expiration of the court supervision the applicable responsible adult consents. Legal parents may access records at any time unless restricted by the court.

- 12.8 Court Ordered: Court initiated treatment for counseling, case management, and/or evaluation for a specific purpose as indicated in the court order.

Notice: The appropriate adult initiates all informed consents to communicate with the court, relative to the court order, with the consent limited to items and/or time lines indicted in the order.

- 13.0 Consent shall be obtained for the specified procedure(s) for the duration of the procedure and shall end when treatment has terminated. The person giving consent shall be free to withdraw the consent at any time without prejudice verbally or by using The Right Door for Hope, Recovery, and Wellness Revocation of Consent Form.

- 14.0 Consent shall be obtained anew when new circumstances substantially affect the risks, consequences, or benefits that can be reasonably expected.

- 15.0 Consent forms shall not include any language, which waives or appears to waive a legal right.

- 16.0 Consent is valid when it is signed by the consumer, the parent of a minor, or an empowered legal representative and one witness. When a "X" is made for a signature, it shall be witnessed by two (2) other persons.

- 17.0 A consent form must be completed and included in the consumer's case record prior to the delivery of services. The consent form shall be obtained by the appropriate Agency employee, independent contractor or volunteer.

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Department of Health and Human Services Administrative Rules: 330.6011, 330.6013, 330.7003, 330.7009 and Part 7, Rights of Recipients of Mental Health Services 330.7001-7032.

Michigan Mental Health Code, Chapter 7, Rights of Recipients of Mental Health Services 330.1706.

Robert S. Lathers, Chief Executive Officer	Date		