



HURON BEHAVIORAL HEALTH
PROCEDURE

Procedure #: RR.2.11
Issue Date: 06/16/00
Rev. Date: 08/07/18
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Title: Recipient Rights – Informed Consent Procedure

Prepared By: Recipient Rights Officer

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Purpose:

To define the policy and practices for written informed consent from consumers.

Scope:

This procedure applies to all employees (including full-time employees, part-time employees, contractual providers, volunteers, students, and/or interns), of Huron Behavioral Health (HBH) programs, both direct and contracted.

Information:

POLICY:

It is the policy of Huron Behavioral Health (HBH) to obtain written informed consent from a consumer of service or applicant for service, from his/her empowered guardian or from a parent, if a minor, prior to providing treatment, changing treatment, or providing medication.

DEFINITIONS:

Informed Consent: A written agreement signed by the consumer, the parent of a minor, or legally empowered guardian, to give consent, which assumes and requires competence, knowledge and voluntariness.

Informed Consent Board: Shall consist of the Interdisciplinary Team and may include a staff member with prior clinical contact with the consumer whose ability to give informed consent is at issue.

Informed Consent requires:

- *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.
- *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. Other relevant information includes all of the following:
 - The purpose of the procedures
 - A description of the attendant discomforts, risks, and benefits that can reasonably be expected
 - A disclosure of appropriate alternatives advantageous to the recipient
 - An offer to answer further inquiries
- *Comprehension* - an individual must be able to understand what the personal implications of providing consent will be based upon the information provided
- *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.

Procedure:

1. Informed Consent shall be obtained for the following conditions involving consumers:
 - Participation in a Huron Behavioral Health Program
 - Routine medical services
 - Medication consent
 - Photographing, audio taping, finger-printing, and/or use of 1-way glass ([90-010](#))

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- Disclosure of confidential information which requires consent
 - Any significant change in treatment
2. All consents will be obtained initially and annually thereafter. Medications consents must be obtained initially when the medication is started and annually thereafter.
 3. When requesting consent for any conditions(s) included in #1, there shall be an explanation given to the consenting individual which will:
 - Explain what is proposed
 - Explain the purpose
 - Explain the risks and benefits
 - Offer to answer any questions
 4. Requests for informed consent shall be made without the intervention of any element of force, duress, deceit, or any other form of coercion.
 5. Request for informed consent shall include an explanation that the consenting individual may revoke their consent without reprisal at any time, either verbally or in writing.
 6. Upon verbal or written revocation of consent, the procedures or services to which consent is being revoked shall be discontinued.
 7. Informed consent may be obtained from:
 - a. Voluntary consumer
 - b. Legal parents of minors
 - c. Legal guardian or court-appointed custodian (such as a foster-parent or child's foster-care worker; or agency-delegate)
 - d. Consumer with advocate selected jointly by consumer and program director. (Advocate can be family member, close personal friend or interested individual, but not a direct service provider).
 - e. Court-Ordered consumers (Note: if consent is refused, the court system must be notified).
 - f. A minor 14 years of age or older as follows:
 - A minor may request and receive mental health services and 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.
 - 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 minor or another and if the minor is notified of the treating professional's intent to inform.
 - Services provided to the minor are limited to not more than 12 sessions or 4 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.
 8. HBH has forms available for obtaining and revoking consent.

When the staff has reason to believe that the individual is not competent to give informed consent the following activities will occur prior to any guardianship proceedings:

- a. Staff Member
 1. May decline to provide the service on the grounds that the consumer is not capable of giving or refusing to give informed consent.
 2. Will inform the Program Director (in writing) with reasons for a conclusion that the consumer is not capable of giving or refusing to give an informed consent.
- b. Program Director
 1. Will determine whether the written conclusion of a staff member regarding the consumer capability of giving or refusing to give an informed consent is valid.

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- Authorize staff, to act upon consent, or refusal of the consumer who is presumed by the Director to be legally competent or:
 - Convene an informed consent board
2. When there is a question as to the consumer's comprehension, the Program Director will convene an informed consent board, selected on a case-by-case basis consisting of:
 - Two mental health professionals of different disciplines with appropriate clinical experience or training
 - A third person, who is not employed by the program, selected by the Program Director from qualified volunteers with an interest in mental health or intellectual/developmental disability advocacy and services
 - One informed consent board member shall have prior clinical contact with the person whose ability to give informed consent is at issue. No board member shall 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. An Informed Consent Board shall:
1. Evaluate the capacity of the consumer to give or refuse to give the required consent by interviewing the consumer and other consumer advocates, and by evaluating available clinical records and test results.
 2. Submit:
 - A written report stating findings of facts
 - The person's desires in the matter when possible
 - A conclusion whether the consent or refusal is, or will be, informed
 - The informed consent board's recommendations
 3. Recommend:
 - Those mental, physical, social, or educational evaluations it deems necessary to further ascertain the capacity to give informed consent, or the need of a minor approaching the age of eighteen (18) for protective services of a guardian, to determine if guardianship will promote and protect the well being of the person or to arrive at a suitable guardianship design.
 4. If a majority of an informed consent board concludes that the consumer does not have the capacity, to make a decision or to rationally understand a situation as required for an informed consent, and if the board concludes that the guardianship can promote and protect the well-being of the consumer, they may recommend a guardianship request designed to encourage the development of maximum self reliance and independence.
 - A parent or a responsible relative, a previously appointed partial guardian or other interested person or entity, shall be notified of the determination that the consumer cannot give an informed consent. More than one entity or person may be notified.
 - Parent(s) or involved person(s) will be encouraged to file a guardianship application.
 - If there are no involved persons, the case manager or designee will file a guardianship application.
 - All guardianship applications will be in accordance with the ARC of the United States (The Arc); and Michigan Protection and Advocacy guidelines.
 5. If a majority of an informed consent board concludes informed consent is absent either because the consumer has not been sufficiently aware of procedures, risks, or other ramifications, benefits or alternatives or because a decision is not voluntary, as required for an informed consent, the program Director shall provide the consumer the necessary information and an opportunity for voluntary choice.
 6. If a majority of an informed consent board concludes that the consumer can give or has

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given informed consent or has the capacity to give an informed consent and has refused to consent, the Director shall authorize the staff to act accordingly.

7. A copy of an informed consent board's report shall be placed in the consumer's case record.

Complaint Process: A consumer or another individual on behalf of a consumer has the right to file a complaint for decisions regarding informed consent. Complaints may be filed with HBH Recipient Rights Office.

Definitions/Acronyms:

DEFINITIONS – see “Information” section (page 1)

ACRONYMS:

CMH – Community Mental Health
COA – Council on Accreditation
EMR – Electronic Medical Record
HBH – Huron Behavioral Health
MDHHS – Michigan Department of Health and Human Services

Forms:

Consent to Treatment Form (in EMR)
[90-119 Psychotropic Medication Consent](#)
Information Release Form (in EMR)
PCP Form (in EMR)
[90-010 Permission to Audiotape / Videotape / Photograph Form](#)
[90-120 DD/MI Residential Consent Form](#)

Records:

Records are retained in the consumer's case record in accordance with the HBH [Record Retention Policy \(QI.1.23\)](#).

Reference(s) and/or Legal Authority

COA standards
Mental Health Code 330.1707, 330.1752 http://www.michigan.gov/documents/mentalhealthcode_113313_7.pdf
MDHHS Administrative Rules 330.7003 http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33007001&Dpt=CH&RngHigh=
Michigan Protection & Advocacy Guidelines <http://www.mpas.org/Legislative.asp?btnLegislative.x=13&btnLegislative.y=7>
[QI.1.23 HBH Record Retention Policy](#)

Change History:

Change Letter	Date of Change(s)	Changes
A	05/26/03	Documentation brought into the new procedure format and numbered for tracking, minimal changes made to content and added Complaint Process, updated references
B	03/01/06	Changed “Program Supervisor” to “Program Director” throughout procedure, added hyperlinks, under “Procedure” # 7 added “the following activities will occur prior to any guardianship proceedings.”, cleaned up formatting, removed words “decisions concerning” from “Complaint Process” section, in preparation for 05/06 Rights Audit, changed “Competency” to “Comprehension” in “Definitions” section.
C	06/29/06	In “Definitions” section, changed all four definitions to align w/ the Administrative Rules (330.7003), added hyperlinks
D	10/25/06	In “Procedure” section, clarified when consents must be obtained (added #2).
E	07/25/11	Reviewed by the Recipient Rights Advisory Committee with no changes recommended.
F	02/02/12	Reviewed by the HBH Recipient Rights Advisory Committee w/ no content changes recommended.
G	05/15/13	Reviewed by the HBH Recipient Rights Advisory Committee w/ no content changes.
H	01/13/15	Reviewed by the HBH Recipient Rights Advisory Committee – added “EMR” in “Acronym” section, removed form numbers in “Forms” section (90-015, 90-009, & 90-028) and added reference to “(in EMR)” (3 places).
I	04/28/15	Reviewed by the HBH Recipient Rights Advisory Committee w/ no content changes.
J	09/01/15	In 7.c added “(such as a foster-parent or child’s foster-care worker; or agency-delegate)”.
K	12/19/16	In 8.b.2 second bullet changed “mental retardation” to “intellectual/developmental disability”, 8.c.4 fourth bullet changed “Association for Retarded Citizens” to “The ARC of the United States (The Arc)”
L	08/07/18	Reviewed by Recipient Rights Advisory Committee – No content changes.