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Owner Polly McCalister
Policy Area Recipient Rights

Consent To Treatment And Services

POLICY

It is the policy of the Detroit Wayne Integrated Health Network (DWIHN) to ensure that informed consent be obtained from the appropriate individual before a recipient receives mental health services, including hospitalization, participation in treatment, programming, medication, surgery, electro-convulsive therapy, fingerprinting, photographing, audio taping, or viewing through one-way glass.

PURPOSE

To provide standards to be followed to ensure informed consent is obtained from the recipient or their legal representative and documented in writing prior to the receipt of mental health services

APPLICATION

1. The following groups are required to implement and adhere to this policy: DWIHN Board, DWIHN Staff, Contractual Staff, Clinically Responsible Service Provider (CRSP) and their subcontractors, Specialty Providers, Crisis Services Vendors
2. This policy serves the following populations: Adults, Children, Individuals with Intellectual and/or Developmental Disabilities (I/DD), Serious Mental Illness (SMI), Serious Emotional Disturbance (SED), Substance Use Disorder (SUD), Autism
3. This policy impacts the following **contracts/service lines**: MI-HEALTH LINK, Medicaid, SUD, Autism, Grants, General Fund

KEYWORDS

- 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 individuals 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. Comprehension
- C. Informed Consent
- D. Knowledge
- E. Legal Competence
- F. Mental Health Professional
- G. Person in loco parentis
- H. Voluntariness

STANDARDS

1. Informed consent must include the elements of legal competency, knowledge, comprehension and voluntariness.
2. The recipient consenting shall be aware of the procedures, risks, other consequences and relevant information.
3. A recipient shall be presumed to be legally competent if he or she does not have a guardian. This presumption may be rebutted only by a court appointment of a guardian or exercised by a court of with guardianship powers and only to the extent of the scope and duration of the guardianship. A provider shall also presume a recipient with a limited guardian is legally competent in all areas which are not specifically identified as being under the control or scope of the guardian.
4. A contractor, and their subcontractors shall establish written policies that include procedures for evaluating comprehension, for assuring disclosure of relevant information, and measures to assure voluntariness before obtaining consent. The policies and procedures shall indicate, for specific circumstances, the types of information that shall be disclosed and the steps that may be taken to protect voluntariness. The procedure shall include a mechanism for determining whether guardianship proceedings should be considered.
5. If a person responsible for obtaining an informed consent or implementing a treatment or procedure requiring informed consent has reasonable cause to believe that a recipient is not capable of giving or refusing to give an informed consent, that person shall notify the person in charge of implementing the recipient's individualized plan of service of the reasons for his/her conclusion that the recipient is not capable of giving or refusing an informed consent.
6. Contractor, and their subcontractors shall establish an appropriate mechanism to accomplish an expeditious preliminary review of the reasons and conclusions that a recipient lacks the capacity to give or refuse an informed consent.
7. If the preliminary review mechanism finds that there is substantial credence to the reasons and conclusion that a recipient is not capable of giving or refusing an informed consent, the contractor shall establish a committee to evaluate the capability of the recipient to give or refuse informed consent. The committee shall conduct this evaluation by reviewing available clinical records, assessments, other relevant information, and obtaining additional evaluations as necessary.
8. At a minimum, a committee established pursuant to Standard 7, above, shall include mental health professionals with appropriate clinical experience or training who are knowledgeable regarding the requirements for informed consent and who are not involved in either the action or application for

which consent is needed or the decision to evaluate the need for guardianship proceedings.

9. If a majority of an informed consent committee concludes that a person does not have the capability to make a decision or to understand a situation, as required for informed consent, and if the committee concludes that guardianship can promote and protect the well-being of the recipient and recommends a guardianship with a scope designed to encourage the development of maximum self-reliance and independence in the recipient, then the contractor Director shall cause a proceeding for guardianship to be commenced in the probate court. Actions taken to cause a guardianship proceeding must be in accordance with Administrative Rule 7003.
10. When a recipient's comprehension is in doubt, justification for petitioning the probate court for guardianship consideration shall be entered in the recipient's clinical record.
11. A provider shall petition or cause a petition to be filed with the court to terminate a recipient's guardian or narrow the scope of the guardian's powers when the recipient demonstrates he or she is capable of providing informed consent.
12. If a majority of the informed consent committee concludes that informed consent is absent either because a recipient has not been made sufficiently aware of the procedures, risks or ramifications, benefits or alternatives or because a decision is not voluntary, as required for an informed consent, the contractor Director shall cause the recipient to be provided necessary information or, when possible, an opportunity for voluntary choice.
13. If a majority of an informed consent committee concludes that a recipient can give or has given an informed consent or has the capacity to give an informed consent and has refused to consent, the Director of the contractor shall ensure that staff takes actions accordingly.
14. Informed consent shall be re-obtained if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.
15. A written or witnessed verbal agreement documenting an informed consent shall not include any exculpatory language through which the recipient, or a person consenting on the recipient's behalf, waives or appears to waive, a legal right, including a release of an contractor or its agents from liability for negligence. The agreement shall embody the basic elements of informed consent in the particular context. The individual, guardian, or parent consenting shall be given adequate opportunity to read the document before signing it. The requirement of a written consent shall not eliminate, where essential to the individual's understanding or otherwise deemed advisable, a reading of the document to the individual or an oral explanation in a language the individual understands. A note of the explanation and by whom made shall be placed in the record along with the written consent.
16. A consent is executed when it is in writing and signed by the appropriate individual; or when a verbal agreement of a recipient is witnessed and documented by an individual other than the individual providing treatment.
17. A recipient or his/her legal representative shall be given notice that they are free to withdraw and discontinue participation in a treatment or procedure at any time, within the constraints of applicable court guardianship or treatment orders, without prejudice to the recipient or guardian.
18. Refusal to give informed consent for an essential component(s) of the treatment plan may in some circumstances constitute a refusal to give consent for all treatment.
19. A minor 14 years of age or older may request hospitalization pursuant to Section 498d of the Mental Health Code. The determination of suitability for hospitalization shall occur pursuant to Section 498e. The parent or guardian of a minor shall be notified immediately of the admission of a

minor to a hospital in any case where the parent or guardian did not execute the application for hospitalization. Notice shall comply with the requirements of Section 498i. The parent or guardian shall be requested by the hospital to give written consent to the treatment of the minor and for the release of information from agencies or individuals involved in treating the minor prior to the hospitalization as determined necessary by the hospital for treatment of the minor. If consent to treatment cannot be obtained, the hospital director may proceed under either the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, or chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, as warranted by the situation and the best interests of the minor.

20. 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. Except as otherwise provided in MCL 330.1707, 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 the 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.
21. Services provided to a minor pursuant to this provision shall be limited to not more than 12 sessions or 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.

QUALITY ASSURANCE/IMPROVEMENT

DWIHN shall review and monitor contractor adherence to this policy as one element in its network management program, and as one element of the QAPIP Goals and Objectives.

The quality improvement programs of direct contractors must include measures for both the monitoring of and the continuous improvement of the programs or processes described in this policy.

COMPLIANCE WITH ALL APPLICABLE LAWS

DWIHN staff, contractors, and subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives, as amended.

LEGAL AUTHORITY

1. Michigan Mental Health Code, P.A. 258 of 1974, as amended, MCL 330.1752; MCL 330.1707; MCL 330.1716; MCL 330.1717; MCL 330.1718; MCL 330.1724
2. Michigan Administrative Code, R330.7003

RELATED POLICIES

1. Fingerprinting, Photographing, Audio-taping and Use of One Way Glass
2. Individual Plan of Service/Person-Centered Planning
3. Personal Property and Search
4. Services Suited to Condition in the Least Restrictive Environment
5. Treatment with Dignity and Respect
6. Use of Psychotropic Drugs

CLINICAL POLICY

YES

INTERNAL/EXTERNAL POLICY

EXTERNAL

Approval Signatures

Step Description

Approver

Date

Policy Review Committee

Eric Doeh: President and CEO

02/2022

Allison Smith: Project Manager,
PMP

02/2022