

## PATHWAYS CMH

<b>POLICY TITLE:</b> INFORMED CONSENT	<b>CATEGORY:</b> RECIPIENT RIGHTS	
<b>EFFECTIVE DATE:</b> January 5, 2011	<b>BOARD APPROVAL DATE:</b> January 5, 2011	
<b>REVIEW DATE:</b> May 22, 2020	<b>REVISION(S) TO POLICY STATEMENT:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>OTHER REVISION(S):</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>RESPONSIBLE PARTY:</b> Recipient Rights Supervisor or Designee	<b>CEO APPROVAL:</b> Mary J. Swift, CEO	

**APPLIES TO:**

Employees, volunteers and contractual providers of Pathways CMH

**POLICY:**

It is the policy of the Pathways Board that informed consent shall be obtained from the recipient, or applicable parent or the guardian for participation in mental health services including medication, surgery, electroconvulsive therapy, photographing, videotaping, audio taping, fingerprinting, viewing through a 1-way glass, or disclosing confidential information which requires consent under the Michigan Mental Health Code, PA258 of 1974, MCL 330.100a(17), and Michigan Department of Community Health Administrative Rule 330.7003.

The following standards shall be adhered to:

**Consent Requires:**

1. A written agreement executed by a recipient, a minor recipient's parent with legal custody, or a recipient's legal representative with authority to execute a consent, or
2. Verbal agreement may be obtained for consent to an individual plan of service. Consent by a recipient, a minor recipient's parent with legal custody, or a recipient's legal representative with authority to execute a consent must be witnessed and documented by an individual other than the individual providing treatment.

Providers shall follow legally required steps for obtaining informed consent including determining legal competency, providing knowledge, evaluating comprehension, and ensuring that consent is voluntary given.

Exceptions to verbal or written informed consent are allowed only within the parameters of court-ordered treatment or emergency interventions as specified by this or other Pathways policy and procedure.

**PURPOSE:**

To protect the rights of recipients

**DEFINITIONS:**

"Consent" means 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.

**REFERENCES:**

MCL 330.100a(19), MCL 330.1100(d), MCL 330.1702(2), MCL 330.1724 MCL 330.1475(1).  
Michigan Administrative Code, R 330.7003

**HISTORY:**

Dates Reviewed: July 11, 2013; July 11, 2014; May 5, 2015; April 19, 2016; April 15, 2017; May 30, 2018; May 22, 2020

Dates Revised: July 11, 2013; April 15, 2017 (procedure); May 30, 2018 (procedures); May 22, 2020

Dates Approved: January 5, 2011

## PROCEDURES

### **A. Informed Consent Process**

Providers shall engage in an informed consent process when seeking and obtaining initial consent to services and prior to engaging in any assessment, treatment, or support subsequently delivered to a recipient. Providers shall be familiar with and adhere to all required elements of informed consent in their practice, as follows:

**1. Legal competency:** The authority by law of an individual to act.

Before obtaining informed consent, a provider must first determine who has the legal authority to grant consent, as follows:

- a. An individual age 18 or older shall be presumed to be legally competent to consent or refuse consent.
- b. The presumption that an individual age 18 or older is competent to consent or to refuse to consent 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 adult individual with a guardian shall be presumed legally competent regarding matters that are not specifically identified as being within the scope and authority of the guardianship. If an individual age 18 or older presents with a court-appointed guardian empowered to give or refuse consent, a provider must verify the type, scope, and current validity of the guardianship order.

A copy of the guardianship order and letters of authority shall be placed in a recipient's clinical record.

- c. If an individual age 18 or older presents with a properly executed Durable Power of Attorney or Patient Advocate Designation empowering the individual's patient advocate to give or refuse consent to mental health treatment, a provider must verify the type, scope, and current validity of the document, a copy of which shall be placed in a recipient's clinical record. A Durable Power of Attorney or Patient Advocate Designation is not effective except under the conditions allowed by law and applicable Pathways policy and procedure.
- d. A determination that an individual meets the criteria of a person requiring treatment or for judicial admission, or any form of admission to a facility including by judicial order does not constitute a determination or adjudication that the individual is incompetent. MCL 330.1702(2). Individuals receiving treatment pursuant to a Probate Court Order shall be provided an opportunity to consent to any proposed assessment, treatment or support. Unless the recipient has consented, services to an individual under these provisions shall only be provided under the scope and authority of a Probate Court order, a copy of which shall be obtained, carefully scrutinized, and placed in the recipient's clinical record.
- e. The fact that an individual has been determined to be legally incompetent to provide consent or is subject to court-ordered treatment does not eliminate a provider's legal obligation to develop a Person-Centered Plan of Services in partnership with the recipient through a Person-Centered Planning process.

f. Minors

- i. A legally emancipated minor shall be presumed to be legally competent and may consent to any mental health service.
- ii. Minors age 14 or older may seek and receive certain limited types of services without the knowledge or consent of their parent or guardian, within the certain constraints (Refer to Consent for Services to Minors Policy for more detail).
- iii. 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 court order (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/affidavit of paternity or other legal documentation of custodial status is required to determine authority to consent.

iv. In lieu of the parent's authority, consent may be obtained from another individual through a properly executed Power of Attorney, a valid Guardianship Order, or other Court Order designating the Court, the Department of Health and Human Services or its designee as having care, custody, and control of the minor. Documentation of any of these authorities must be obtained, carefully scrutinized to verify the minor's legal status and the scope of court-ordered or delegated decision-making authority, and placed in the minor recipient's clinical record.

**2. Knowledge:** The disclosure of what a reasonable individual needs to know in order to make an informed decision.

To consent, a recipient or legally empowered representative must have basic information about the risks, other related consequences, and other relevant information involved in the proposed assessment, treatment, or support. Relevant information must be clearly explained and documented as having been provided to the consenting individual including, at a minimum, all of the following:

- a. The type, purpose and scope of the proposed treatment, support, medication, procedure, or other action; and
- b. A detailed, unambiguous description of the potential benefits and the probability of outcomes of the proposed treatment or support should consent be given or refused; and
- c. A detailed, unambiguous description of attendant risks, discomforts, side effects, and reactions that can reasonably be expected should consent be given or refused; and
- d. A disclosure of appropriate alternatives available and potentially advantageous to the recipient in lieu of the proposed treatment or support; and
- e. An offer to answer further inquiries and to provide additional information.

**3. Comprehension:** The ability of an individual to understand the personal implications involved and to meaningfully communicate a voluntary choice to grant or not grant consent based upon a full disclosure of relevant information by a provider.

- a. Providers seeking consent from an individual must assess the individual's capacity to provide informed consent to the proposed treatment, support, or other activity based upon a judgment derived from clinical assessment methods such as the completion of a mental status examination or psychological evaluation.
- b. After the assessment, if an individual's comprehension is in doubt, the assigned mental health professional shall consult with their immediate supervisor. Other clinical team members may be consulted as necessary. If as a result of this consultation there is reasonable cause to believe that the recipient's comprehension is in doubt, the provider shall consider guardianship or other reasonable alternatives.

**4. Voluntariness:** The free power of choice to consent or refuse to consent.

- a. A provider shall seek consent without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion including promises or assurances of privileges or freedom.
- b. A provider shall seek consent with an explicit instruction that the consenting individual is free to grant or refuse consent and to withdraw consent and to discontinue participation in treatment, support, or

other activity at any time, within the parameters of applicable orders for guardianship or treatment, without prejudice to the recipient.

- c. In explaining that treatment or support may not be provided without informed consent a provider shall offer to provide additional information.
- d. 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 or she shall be advised in a factual, non-coercive manner that treatment must cease and that the Alternative Treatment Program is required by law to report to the court to convene a hearing pursuant to the Michigan Mental Health Code, MCL 330.1455(8).
- e. An individual adjudicated as a person requiring treatment pursuant to a Probate Court Order (Alternative Treatment Order – “ATO”) shall also be asked to consent. Treatment, as defined by the Michigan Mental Health Code, MCL 330.1100(d), includes “care, diagnostic, and therapeutic services.” Treatment pursuant to an ATO shall be provided within the scope of the court’s order. Additional treatment not set forth in the court’s order shall only be provided with the recipient’s with consent. If the individual refuses to consent but nevertheless assents to participate in court ordered treatment, this shall be noted in the record and treatment may proceed. If the individual refuses to consent and refuses to participate in treatment, or if it is determined that the alternative treatment order has not been or will not be sufficient to prevent harm to the recipient or others, the individual shall be advised in a factual, non-coercive manner that the Alternative Treatment Program is required by law to immediately notify the court pursuant to the Michigan Mental Health Code, MCL 330.1475(1).

### **Verbal Consent**

1. Verbal agreement to an Individual Plan of Service may be obtained from the recipient, the recipient's legal representative with authority to execute a consent, or a parent with legal custody of a minor recipient.
2. Verbal consent for participation in other mental health services, including disclosure of confidential information, may be obtained from the recipient. This does not apply to recipients who are receiving co-occurring services; 42 CFR Part 2 requires written consent. If another person has authority to execute a consent on behalf of the recipient, such as a parent or guardian, written consent must be obtained.

Verbal consent must be witnessed and documented by an individual other than the person providing the treatment.

### **B. Verification of Consent**

Prior to obtaining verbal or written consent a provider shall do all of the following:

1. Give the individual, guardian, or parent consenting adequate opportunity to read any written agreement documenting consent document before signing.
2. Where essential to the individual’s understanding or otherwise deemed advisable, a provider shall read the consent document in full to the individual or provide an oral explanation in language the individual understands before signing. A note of the explanation and by whom shall be documented and placed in the record along with the written consent.

### **C. Documentation of Consent**

Consent is valid only when it has been documented on a legally compliant consent form with either the signature of the legally appropriate individual or the verbal consent of that person as witnessed by an individual other than the person seeking consent.

Pathways and, as applicable, providers under contract will maintain and use only approved forms for the purpose of obtaining and documenting informed consent to treatment. A written agreement documenting informed consent shall meet all of the following criteria:

1. Embody and demonstrate that the basic elements of informed consent (competency, knowledge, comprehension, and voluntariness) have been met in the particular context for which consent is sought.
2. 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 a provider or its agents from liability for negligence.

**Forms documenting informed consent include, but are not limited to:**

1. Initial Consent to Treatment forms, which will normally be presented following the completion of intake assessment.
2. Person or Family Centered Plan of Service forms, including any subsequent treatment plan addenda, behavior treatment programs, or other program plans, the signatures to which constitute written consent to any of the specialized mental health treatments and/or supports within the service array.
3. Consent for Psychotropic Medication forms, which must be presented and completed prior to the prescription of medications.
4. Consent to Disclose Confidential Information forms, which are required to be completed in full prior to the disclosure of confidential information, except when permitted or required by law.
5. Consent to take Photographs, Audio-Tape or Fingerprint forms, which are required to be completed prior to any electronic recording of a recipient.
6. Other program agreement forms, placement agreements, consents to emergency medical treatment, consents to special activities, etc.

**D. Withdrawal of Consent**

A recipient who has granted consent or other legally appropriate individual who has granted consent on behalf of the recipient may withdraw consent at any time either through a verbal or written statement to this effect. Withdrawal of consent shall be immediately honored and documented in a recipient's clinical record. Treatment cannot recommence until consent is again granted.