

## PATHWAYS CMH

<b>POLICY TITLE:</b> MINOR 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> December 30, 2019	<b>REVISION(S) TO POLICY STATEMENT:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>OTHER REVISION(S):</b> <input type="checkbox"/> Yes <input checked="" 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 one-way glass, or disclosing confidential information which requires consent. Michigan Mental Health Code, PA 258 of 1974, MCL 330.100a(17), and Michigan Department of Community Health Administrative Rule 7003.

**PURPOSE:**

To protect the rights of recipients.

**DEFINITIONS:**

N/A

**REFERENCES:**

MCL 330.1752  
MCL 330.1707  
MCL 722.623  
MCL 700.5103  
MCL 700.5205  
MCL 400.115c  
MCL 722.124a  
MCL 712A.1 to 712A.32  
MCL 803.303 et seq  
Michigan Administrative Code R 330.7003  
State of Michigan, Department of Health and Human Services, Children’s Foster Care Manual- Health Services for Foster Children (2/01/2014)

**HISTORY:**

Dates Reviewed: July 11, 2013; March 24, 2014; May 5, 2015; April 19, 2016; April 15, 2017; March 26, 2018; December 30, 2019  
Dates Revised: July 11, 2013; March 24, 2014  
Dates Approved: January 5, 2011

## PROCEDURES

- A. In all instances consent for services to minors shall be obtained in accordance with Pathways Informed Consent policy.
- B. A legally emancipated minor shall be presumed to be legally competent and may consent to any mental health service.
- C. Pursuant to MCL 330.1707, a minor fourteen (14) years of age or older may request and receive mental health services and a mental health professional may provide mental health services without the consent or knowledge of the minor's parent, guardian, or person in loco parentis subject to the following limitations and conditions:
1. Services are limited to those provided on an outpatient basis, excluding pregnancy termination referral services and the use of psychotropic drugs.
  2. The provision of these services is limited to not more than twelve (12) sessions or four (4) months per request for services. The minor's parent, guardian, or person in loco parentis is not liable for the costs of these services.
  3. Services provided to a minor without the knowledge or consent of the minor's legal representative shall, to the extent possible, promote the minor's relationship to the parent, guardian, or person in loco parentis, and shall not undermine the values he or she has sought to instill in the minor.
  4. Except with informed consent of the minor, the minor's parent, guardian, or person in loco parentis shall not be informed of the services provided without the consent of the minor unless the mental health professional treating the minor determines that 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.
  5. The prohibition on disclosure to the minor's parents without the minor's consent does not relieve a mental health professional from his or her duty to report suspected child abuse or neglect under Section 3 of the child protection law, Act No. 238 of the Public Acts of 1975, being MCL 722.623.
  6. 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.
- D. In lieu of the minor's right to consent to mental health services under the conditions listed above, the parent with legal custody of a minor has the authority to consent to mental health treatment (including psychotropic medications) for the minor if the parent's rights have not been otherwise delegated by the parent or limited by a court order with respect to medical decisions, as follows:
1. Pursuant to the Estates and Protected Individual's Code (PA 368 of 1998, MCL 700.5103), a parent or guardian of a minor may delegate powers regarding care or custody of the minor to another person for a period not exceeding six months by means of a properly executed power of attorney. A person granted powers under a properly executed power of attorney may consent to mental health treatment (including psychotropic medications), but only during the effective period and only within the scope of delegated powers.
  2. A guardian of a minor who has been appointed pursuant to the Michigan Estates and Protected Individual's Code (PA 386 of 1998, MCL 700.5205) with the authority to make medical decisions has the authority to consent to mental health treatment (including psychotropic medications).
  3. If a parent with legal custody of a minor or a guardian of a minor with medical decision-making powers has voluntarily placed the minor in out-of-home care under the authority of the Michigan Social Welfare Act (PA 280 of 1939 MCL 400.115c), pursuant to the Michigan Child Caring

Organizations Act (PA 116 of 1973, MVL 722.124a) only the parent with legal custody or the guardian of a minor as described above has the authority to consent to mental health treatment (including psychotropic medications).

4. If the court has taken jurisdiction of the minor under the authority of the Michigan Probate Court (Act 288 of 1939, MCL 712A.1 to 712A.32), either as a Temporary Court Ward (for neglect or delinquency ) or as a Permanent Court Ward, or has taken permanent jurisdiction of the minor under the authority of the Youth Rehabilitation Services Act (PA 150 of 1973, MCL 803.303 et, seq.) either as a Permanent Court Ward or as a State Ward (MCI and MCI-O), the court will designate, by court order, the “care, custody, and control” of the minor to either the Family Division of the Circuit Court or the Department of Health and Human Services (or its designated child placing agency). In these cases, the authority to consent is as follows:
  - a. For all wards, the authority to consent to routine, non-surgical medical care, (which includes mental health treatment, but excluding psychotropic medications), rests with the Court, the DHS, or its designated child-placing agency. A foster parent, relative caregiver or child care institution (CCI) may be invested with the authority to consent for the ward. The DHS-3762, Consent to Routine, Non-surgical Medical Care and Emergency Medical or Surgical Treatment card, is used to authorize a caregiver to provide consent. The caregiver must first present the DHS-3762, and a copy should be entered into the minor’s clinical record. When parental rights have not been terminated or limited by Probate Court, it is preferred that consent for mental health treatment is obtained from the child’s parent(s). The Clinician should verify with the local Department of Health and Human Services or with Probate Court whether the parents of the ward have the ability to consent.
  - b. For Permanent Court Wards or MCI Wards, the authority to consent for psychotropic medications rests only with the court-appointed supervising agency.
  - c. For temporary wards, the supervising agency must seek to obtain parent consent for psychotropic medication. If the parent with legal custody is not available, a worker from the supervising agency may sign for psychotropic medication only as a condition of admission for an emergency psychiatric hospitalization. If psychotropic drugs are prescribed for continued use upon discharge from a hospital or as a result of outpatient treatment, parental consent is required. If the parents are unavailable to give consent or refuse to consent, psychotropic medications may not be prescribed or administered to the minor unless then court has specifically granted consent following a motion to this effect from the DHHS legal counsel (refer to the Procedures Section for a decision making grid for consent in out-of-home placement(s)).
5. For minors between the ages of 14-18 receiving co-occurring services, the consent of the minor is required.

#### CONSENT FOR MINORS IN OUT-OF-HOME PLACEMENTS

The following is a decision-making grid for determining who has the legal authority to consent to mental health treatment for minors when the minor is in an out-of-home placement:

Type of Ward	Authority to Consent to Mental Health Treatment	Authority to Consent to Psychotropic Medication
Voluntary Placement	Parent, Durable Power of Attorney, Legal Guardian, or minor recipient age 14 or older	Parent or legal guardian
	Parents/ Guardian ad Litem- with protective order/	Outpatient –Parent or legal guardian

Temporary Court Ward (Neglect or delinquent)	Agency*/Foster Parent, Relative Caregiver, or Child Care Institution**, with DHS-3762	Emergency psychiatric hospitalization only when parent is not available – Agency*
Permanent Court Ward	Agency*Child Care Institution**	Agency*
State Ward/MCI	Agency*/Child Care Institution**	Agency*
State Ward/MCI-O and Act 150	Agency*/Child Care Institution**	Agency*

(Reference Source – Children’s Foster Care Manual DHS CFF 722-11)

\*Agency refers to DHHS, private child placing agency or the Circuit Court-Family Division

\*\*Child Care Institution refers to a private child care or DHS Institution