




Community Health &  
Research Center

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| Approved By: Mohamad Khraizat  | Title: Health Operations Manager |
| Signature:  | Date: 12-18-19                   |

#### I. POLICY

It is the policy of ACCESS Community Health and Research Center (ACCESS CHRC) to ensure that informed consent is obtained from the appropriate individual before an individual receives mental health services and participates in treatment.

#### II. PURPOSE

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

#### III. APPLICATION

This policy applies to ACCESS employees, contractors, and their subcontractors contracted to provide services.

#### IV. DEFINITIONS

Comprehension: The ability of the individual to understand what the personal implications of providing consent will be based upon the relevant information available.

Informed Consent: A written agreement or written documentation of a verbal agreement executed by an individual or his or her legal representative.

Knowledge: Basic information about the procedure or treatment, risks, other related consequences and other relevant information. The standard, governing required disclosure by a person obtaining informed consent 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 or treatment,
- A description of the attendant discomforts, risks and benefits that can reasonably be expected,
  - A disclosure of appropriate alternatives advantageous to the individual,
  - An offer to answer further inquiries.

Legal Competence: Capability and authority by law to take an action.

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**Mental Health Professional (MHP):** An individual who is trained and experienced in the area of mental illness or developmental disabilities and who is one of the following:

- A physician (MD or DO) who possesses a permanent license to practice medicine in the State of Michigan, a Michigan Controlled Substance license, and a Drug Enforcement Agency (DEA) registration.
- A psychologist who possesses a full license by the State of Michigan to independently practice psychology; a master's degree in psychology (or a closely related field as defined by the state licensing agency) and licensed by the State of Michigan as a limited-licensed psychologist (LLP); or a master's degree in psychology (or a closely related field as defined by the state licensing agency) and licensed by the State of Michigan as a temporary limited-licensed psychologist.
- A Registered Nurse (RN) licensed by the State of Michigan to practice nursing (MCL 333.17201).
- A Social Worker who possesses Michigan licensure as a master's social worker, or Michigan licensure as a bachelor's social worker, or has a limited license as a bachelor's social worker or master's social worker. Limited licensed social workers must be supervised by a licensed MSW (MCL 333.18501 - 507).
- A Professional Counselor licensed by the State of Michigan to practice professional counseling. This includes Rehabilitation Counselors.
- A Marriage and Family Therapist licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

**Person in loco parentis:** 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.

**Voluntariness:** The free power of choice without the intervention of an element of force, fraud, deceit, duress, overreaching, or other ulterior form of consent or coercion, including promises or assurances of privilege 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 individual and/or guardian.

## **V. PROCEDURES**

- A. Staff shall ensure that informed consent is obtained from the appropriate individual before an individual receives mental health services and participates in treatment. Informed consent must include the elements of legal competency, knowledge, comprehension and voluntariness. The individual consenting shall be aware of the procedures, risks, other consequences and relevant information.
- B. An individual 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 with



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guardianship powers and only to the extent of the scope and duration of the guardianship. ACCESS shall also presume an individual with a limited guardian is legally competent in all areas that are not specifically identified as being under the control or scope of the guardian.

- C. ACCESS will evaluate 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.
- D. If a person responsible for obtaining an informed consent or implementing a treatment or procedure requiring informed consent has reasonable cause to believe that an individual is not capable of giving or refusing to give an informed consent, that person shall notify the person in charge of implementing the individual's individualized plan of service of the reasons for his or her conclusion that the individual is not capable of giving or refusing an informed consent.
- E. ACCESS shall establish an appropriate mechanism to accomplish an expeditious preliminary review of the reasons and conclusions that an individual lacks the capacity to give or refuse an informed consent. When an individual's comprehension is in doubt, justification for petitioning the probate court for guardianship consideration shall be entered in the individual's clinical record.
- F. ACCESS may petition or cause a petition to be filed with the court to terminate an individual's guardian or narrow the scope of the guardian's powers when the individual demonstrates he or she is capable of providing informed consent.
- G. Informed consent shall be re-obtained if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.
- H. A written or witnessed verbal agreement documenting an informed consent shall not include any exculpatory language through which the individual, or a person consenting on the individual's behalf, waives or appears to waive, a legal right, including a release of ACCESS from liability for negligence. The agreement shall embody the basic elements of informed consent in the particular context.
- I. The consenting individual, guardian, or parent shall be given adequate opportunity to read the document before signing it. The requirement of a written consent shall not eliminate a reading of the document to the individual or an oral explanation in a language the individual understands when essential to the individual's understanding or otherwise deemed advisable. A note of explanation and who made it shall be placed in the record along with the written consent.
- J. Consent is executed when it is in writing and signed by the appropriate individual or when a verbal agreement of an individual is witnessed and documented by an individual other than the individual providing treatment.
- K. An individual or his or 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 individual or guardian.



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- L. Refusal to give informed consent for an essential component of the treatment plan may in some circumstances constitute a refusal to give consent for all treatment.
- M. 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.
- N. 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.
- O. 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.
- P. Services provided to a minor pursuant to this provision shall be limited to not more than twelve sessions or four 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.

#### **VI. QUALITY ASSURANCE/ IMPROVEMENT**

The ACCESS Quality Assurance Manager shall monitor adherence to this policy. The ACCESS Quality Assessment and Performance Improvement Program (QAPIP) must include measures for both monitoring of and for the continuous improvement in quality of the program or process described in this policy.

#### **VII. COMPLIANCE WITH ALL APPLICABLE LAWS**

ACCESS staff are bound by all applicable county, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, and administrative directives in effect at the time of the writing of this policy, or as amended.

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#### **VIII. LEGAL AUTHORITY AND REFERENCES**

- Michigan Mental Health Code, P.A. 258 of 1974, as amended, MCL 330.1752; MCL330.1707; MCL 330.1716; MCL 330.1717; MCL 330.1718; MCL 330.1724 © Michigan Administrative Code, R330.7003
- Agency Policies (All Agency policies refer to the most recent policy at the time of writing):
  - Fingerprinting, Photographing, Audio-taping and Use of One Way Glass
  - Individual Plan of Service/Person-Centered Planning
  - Personal Property and Search
  - Services Suited to Condition in the Least Restrictive Environment
  - Treatment with Dignity and Respect
  - Use of Psychotropic Drugs

#### **IX. EXHIBIT**

Orientation, Acknowledgement and Consent Form

Consent to Treatment Form