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|  | <b>General Policy</b> |   |                   |       |
|   | <b>Chapter:</b>       | Board Service and Program Administration    | <b>Policy #</b>   | 2-5-1 |
|   | <b>Section:</b>       | Informed Consent Pertaining to CMH Services | <b>Revision #</b> | 4     |

- I. **PURPOSE:** To establish policy and procedures for obtaining consent pertaining to WMCMH services.
- II. **APPLICATION:** All mental health programs and services operated by the West Michigan Community Mental Health Governing Body.
- III. **REQUIRED BY:** Michigan Department of Health and Human Services Administrative Rule 330.7003, the Michigan Mental Health Code 330.1100, 330.1707, 330.1724, and Accrediting Bodies.
- IV. **DEFINITIONS:**

Consent: A written agreement executed by a recipient, a minor recipient’s parent, or a recipient’s legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

Informed Consent: An agreement in writing executed by the person served, his/her guardian if empowered to execute a consent, or his/her parents if he/she is a minor. It implies the following:

- Comprehension: Requires the ability of an individual to understand rationally what the personal implications of providing consent will be based on the nature of a procedure, potential risks, consequences, and other relevant information.
- Knowledge: An individual providing consent to treatment must have basic information about the procedure(s), risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what an individual needs to know in order to make an informed decision. Other relevant information includes all of the following: (i) The purpose of the procedure(s); (ii) A description of any attendant discomforts, potential risks, and benefits that can be reasonably expected; (iii) A disclosure of appropriate alternatives advantageous to the individual, and (iv) An offer to answer further inquiries.
- 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 resumed legally competent regarding matters that are not within the scope and authority of the guardianship.
- 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 individual.
- Photography: The use of still, motion pictures, or videotape cameras.


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V. **POLICY:** It is the policy of West Michigan Community Mental Health that informed consent be obtained prior to implementing the following:


- 1.1 Receiving behavioral health services;
- 1.2 Photographing, audiotaping, videotaping and/or using one-way observation vision mirrors;
- 1.3 Disclosing confidential information which requires consent; and
- 1.4 Prescribing medications.
- 1.5 Providing emergency evaluations at an offsite location.

VI. **PROCEDURES:**

1. Informed Consent authorizations shall include an explanation that the person providing consent may voluntarily revoke the consent at any time without prejudice to the individual.
2. During the request for service process (and annually thereafter) the individual, his/her guardian, or a parent of a minor shall consent to treatment using the Consent and Agreement to Pay for Services in the EHR.
  - 2.1 The individual consenting shall be aware of the procedures, risks, other consequences, and relevant information.
3. A minor 14 years of age or older may request and receive mental health services and CMH clinicians 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 may be informed under the following conditions:
  - 3.1 If the clinician determines that there is a compelling need for disclosure based upon substantiated probability of harm to the minor or another; however, the clinician shall notify the minor of his/her intent to inform.
  - 3.2 If the minor has received 12 sessions or has been receiving services for four (4) months, the clinician shall either terminate services or notify the minor's parent, guardian, or person in loco parentis with the minor's consent to provide further outpatient services.
4. During the course of treatment, the case holder or an Access Clinician shall determine/evaluate if the individual is able to understand/comprehend the nature of a procedure/service, potential risk, consequences and other relevant information for which the individual is seeking.


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- 4.1 If it is determined that the individual is unable to understand the above areas, then the case holder or the Access clinician shall take the necessary steps to petition the court for guardianship. An evaluation of the ability to give consent shall precede any guardianship proceedings.
- 4.2 The case holder or the Access Clinician shall only petition the court for guardianship in those areas where assistance is needed.
5. When a request by WCMCMH to the consumer/guardian is made to to photograph, videotape, audio record, and/or use 1-way glass, the case holder or designee shall obtain prior written consent from one of the following: (a) The individual if 18 years of age or over and competent to consent. (b) The guardian of the individual if the guardian is legally empowered to execute such consent. (c) The parent with legal and physical custody of the individual if less than 18 years of age.
- 5.1 Photographing, video recording, audio recording, and/or using one-way vision mirrors may be used in order to:
- 5.11 Determine the name of an individual; or,
- 5.12 Provide services, including research to an individual; or,
- 5.13 Provide educational or for training purposes which includes:
- Reviewing the effectiveness of the clinical treatment.
  - Providing an objective self-critique of the individual’s demeanor to be used in teaching ADL skills, interviewing skills, etc.
  - Providing public awareness of mental health services.
- 5.14 A photograph of an individual for information or purely personal or social purposes shall not be taken or used if the individual has indicated his or her objection.
- 5.15 Mechanisms for notifying recipients and visitors the use of video surveillance must be made. Video surveillance is the use of cameras for the purpose of viewing moving visual images made digitally for the purposes of safety, security, and quality improvement. Video surveillance may not record; however, a facility may monitor with cameras where the images are not captured and recorded. Monitoring may not be done in private areas, such as bedrooms or bathrooms. Monitoring may occur only in common areas.
- 5.16 WCMCMH seeks to protect the confidential nature of our services, therefore, consumers, guardians, or visitors are prohibited from video or audio recording WCMCMH treatment or other CMH activities on their phone or other recording devices including other consumers, guardians, or visitors.
- 5.17 WCMCMH prohibits video or audio recording of service appointments at

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the request of consumer or a consumer's guardian(s). Furthermore, consumer/guardian recording appointments without staff knowledge is also strictly prohibited. Any recorded appointments by WMCMH for approved reasons will not be provided to the consumer or guardian, if requested. The recordings will remain the property of West Michigan CMH and are handled per policy in alignment with all required confidentiality laws, ethics, and regulations.

- 5.2 Photographs taken to assist in identifying the individual shall also become a part of his/her clinical record. If a copy of a photograph is given to others to assist in determining the name/identity of an individual (e.g., law enforcement) the photograph shall be returned to the designated clerical support staff and kept a part of the individual's clinical record. In addition, the designated clerical support staff shall inform the outside party that the copy of the photograph is to be returned together with copies that were made to WMCMH once the name/identity of the individual is determined. Please refer to Policy Chapter 7: HIPPA, Section 1: General Policy, Appendix 7.1.1.12 Audiovisual Recording Procedure.
- 5.21 The case holder shall document in the individual's clinical record using a progress note; the need for making a copy of the individual's photograph. The case holder shall also document in the individual's clinical record the date the photograph was given to the outside party and the date the copy of the photograph was returned to WMCMH.
- 5.22 Photographs or audiotapes in the record of an individual served, and any copies of them, shall be destroyed when they are no longer essential in order to achieve one of the objectives set forth in subsection (5), or upon discharge of the individual, whichever occurs first.
6. WMCMH staff members shall have the individual, his/her guardian or a parent of a minor child sign a Consent to Exchange Health Information prior to disclosing information to outside agencies. WMCMH staff members shall also follow the procedures set forth in the Release of Person Served Information Policy (Chapter Five, Section Two, Subject 1.2).
7. A member of the consumer's treatment team and/or Healthcare Integration Services Team staff shall have the individual, his/her guardian or parent of a minor child sign a Consent for Medication Treatment. (Refer to the Medication Services General Policy Chapter Two, Section Ten, Subject One, and Agency Procedures for Accessing Medication Services Chapter Two, Section Ten, Subject Two for detailed procedures).
8. If an individual, his/her guardian, or a parent of a minor child revokes a consent, the request can be verbal or in writing to the case holder, front desk staff or designated clerical support staff. The case holder shall document the verbal or written revocation in a progress note. The case holder shall discontinue the procedures or services to which consent was originally provided except in unusual circumstances, such as a court order for treatment.
9. Persons who present at the ED or jail, after hours and require an emergency

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evaluation, will sign the Consent for Emergency Off-site Evaluation (CR#011) when their condition allows.

10. Individuals ordered by a court of law to receive mental health services on an involuntary basis represent a special classification. An informed consent for services need not be obtained prior to providing service, but efforts shall always be made to obtain written consent whenever possible before services are initiated.
11. WMCMH uses an automated appointment reminder system and gives the adult competent consumer served, the consumer's guardian with authority to consent, the parent with legal custody of a minor child or the court-appointed personal representative the option to sign or provide verbal consent using the Electronic Communications Consent in the ERH to authorize or to opt out of automated appointment reminders. If a verbal consent is given, then it must be witnessed and documented by an individual other than the individual providing treatment.
  - 11.1 Automated appointment reminders are available by automated texts or automated voice calls.
  - 11.2 Standard text messaging or voice call rates may apply to the receiver for any automated messages.
  - 11.3 Prior to the receiving automated appointment reminders, the WMCMH designated person shall obtain the authorized informed consent.
  - 11.4 The consumer's appointment reminder communication preference will be clearly noted in the electronic health record.
  - 11.5 The consumer / legal representative may withdraw consent verbally or in writing at any time by informing a WMCMH employee. Designated clerical support staff must be notified, and withdrawal must be documented in the electronic medical record.
  - 11.6 Automated reminders may not be the only form of communication that WMCMH will use to communicate appointment reminders. WMCMH may decide that it is not in the consumer's best interest to continue to communicate by automated appointment reminders. In such case, WMCMH will notify the consumer / guardian that it no longer intends to communicate appointment reminders using the automated communication.
12. Tele-health visits must be consented to by a competent consumer, consumer's legal representative, or by a minor 14 years or older who is accessing limited services without a parent or guardian.
  - 12.1 Consent is documented on the service activity log page of the direct progress note.
  - 12.2 Consent is documented in an indirect note if necessary.

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VII. **SUPPORTING DOCUMENTS:**

Please See:

- WMCMH Form CR010 Consent for videotaping, audiovisual aid and photographing
- Policy 7-1-1 and Appendix 7.1.1.12 Audiovisual Recording Procedure
- Consent and Agreement to Pay found in the EHR
- Consent for Medication Treatment Form found in the EHR
- Consent to Share Health Information found in the EHR
- WMCMH Form CR011 Consent for Emergency Off-site Evaluation
- CLI\_16\_WI\_01 How to Complete a Direct Progress Note from Calendar

VIII. **POLICY/PROCEDURES REVIEW:**

| REV#  | APPROVED BY | Policy/Procedure | DATE    |
|---|-------------|------------------|---------|
|   |             |                  | 03/2007 |
|   |             |                  | 11/2008 |
|   |             |                  | 01/2011 |
|   |             |                  | 05/2014 |
|   |             |                  | 02/2017 |
|   |             |                  | 11/2017 |
|   |             |                  | 05/2018 |
|   |             |                  | 05/2019 |
| 2   | COC         | Procedure        | 05/2021 |
| 3   | COC         | Procedure        | 04/2022 |
| 4   | COC         | Procedure        | 12/2022 |
| 4   | COC         | Annual Review    | 02/2023 |
| <b><i>Board Approval Date: 02/20/1996</i></b> |             |                  |         |

IX. **CHIEF EXECUTIVE OFFICER ENDORSEMENT:**

I have reviewed and approve of policy # 2-5-1 Revision # 4.

**CEO:** Lisa A. Williams

**Approval Signature:** \_\_\_\_\_