

NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS

POLICY TITLE: Informed Consent

PAGE: 1 of 5

MANUAL: Recipient Rights

SECTION: Rights

ORIGINAL EFFECTIVE DATE: 9/15/00

BOARD APPROVAL DATE: 11/25/13

REVIEWED/REVISED ON DATE: 6/27/18

CURRENT EFFECTIVE DATE: 7/1/18

REVISIONS TO POLICY STATEMENT: YES NO

OTHER REVISIONS: YES NO

APPLIES TO:

All services provided by Northpointe Behavioral Healthcare Systems.

POLICY:

It is the policy of the Northpointe Board that informed consent shall be obtained from the recipient, or applicable parent or guardian for participation in mental health services including medication, surgery, electro convulsive therapy, photographing, videotaping, audio taping, fingerprinting, viewing through a one-way glass, for services rendered via video conferencing, or disclosing confidential information which required consent. **There are additional protections for persons receiving Substance Abuse treatment. See policy on Substance Abuse 42 CFR Part 2.**

PURPOSE:

To develop a policy to assure informed consent is obtained for services.

DEFINITIONS:

Competency – The quality or state of being mentally competent, the quality or state of being legally qualified or adequate.

Comprehension – An individual must be able to understand what the personal implications of providing consent will be, based upon the information that will be provided.

Informed Consent – A written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment, that assumes competency, knowledge, comprehension, and voluntariness.

Knowledge – To consent, a recipient or legal representative must have basic information about the procedure, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a reasonable patient needs to know in order to make an informed decision. Other relevant information includes all of the following:

- a. The purpose of the procedures.
- b. A description of the attendant discomforts, risks, and benefits that can reasonably be expected.
- c. A disclosure of appropriate alternatives advantageous to the recipient.
- d. 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 presumed legally competent regarding matters that are not within the scope and authority of the guardianship.

Primary Clinician – The staff member in charge of implementing the recipient's person-centered plan.

Voluntariness – 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 recipient or the individual signing the consent.

NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS

POLICY TITLE: Informed Consent

PAGE: 2 of 5

MANUAL: Recipient Rights

SECTION: Rights

ORIGINAL EFFECTIVE DATE: 9/15/00

BOARD APPROVAL DATE: 11/25/13

REVIEWED/REVISED ON DATE: 6/27/18

CURRENT EFFECTIVE DATE: 7/1/18

STANDARDS:

1. An agreement in writing 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, legal right, including releasing the agency or its contract agencies from liability for negligence. The agreement shall include all the basic elements of informed consent for this particular situation.
2. The individual signing the consent form shall be given adequate opportunity to read the document and ask questions before signing it.
3. When essential to the individual's understanding, or when otherwise deemed advisable, the document shall be read, or an oral explanation shall be provided in a language the individual understands. A note of the explanation and who made it shall be filed in the recipient's record along with the consent form.
4. A consent is executed when it is signed by the appropriate individual.

PROCEDURES:

A. Obtaining Informed Consent

1. The primary clinician shall:

- a. Obtain informed consent prior to the recipient receiving any assessment or mental health treatment, including medication, surgery, or electro convulsive therapy, but not including necessary emergency services;
- b. Obtain informed consent prior to photographing, audio taping, or fingerprinting, or using a one-way glass, or video conferencing;
- c. Obtain informed consent prior to any release to the media;
- d. Obtain informed consent prior to disclosing confidential information which requires consent;
- e. Verify that the individual signing the consent is one of the following:
 - 1) The recipient if he/she is 18 years of age or over and does not have a guardian empowered to consent for this specific purpose;
 - 2) The guardian of the recipient if the guardian is legally empowered to execute such a consent;
 - 3) The parent with legal custody of the recipient if the recipient is less than 18 years of age;
 - 4) Other individuals specified in Section 716 of 717 of the Mental Health Code.
- f. Assure that the informed consent:
 - 1) Is filed in the recipient's record;
 - 2) Specifies the date it will expire;
 - 3) Shall not remain in effect for longer than 12-months;
 - 4) Automatically expires when the purpose for which it was obtained has been achieved. If the purpose has not been achieved by the expiration date, consent must be re-obtained or the purpose discontinued;
 - 5) Is re-obtained if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.
- g. Inform the individual signing the consent of the:
 - 1) Procedure, attendant discomforts, risks, benefits, and other consequences that can be reasonably expected;
 - 2) Appropriate alternatives which could be advantageous to the recipient;
 - 3) Other relevant information that the individual needs to make a decision.
 - 4) Offer to answer further inquiries;
 - 5) Instruct the individual signing the consent that he/she is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient or the individual consenting;

NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS

POLICY TITLE: Informed Consent

PAGE: 3 of 5

MANUAL: Recipient Rights

SECTION: Rights

ORIGINAL EFFECTIVE DATE: 9/15/00

BOARD APPROVAL DATE: 11/25/13

REVIEWED/REVISED ON DATE: 6/27/18

CURRENT EFFECTIVE DATE: 7/1/18

- 6) Use the initial and annual assessment process to evaluate whether the recipient is competent to give informed consent, and report to his/her supervisor if there is a need to file a petition for guardianship;
- 7) Evaluate the recipient's ability prior to any guardianship proceeding and report the findings to his/her supervisor.

2. The primary clinician's supervisor shall review the evaluation of competency and determine whether there is a need to file a petition for guardianship.

B. Consent for Treatment

1. The primary clinician shall ensure that the individual signing the consent has received an explanation of the following during the person-centered planning process:
 - a. The goals, objectives, and time frames for the proposed treatment plan;
 - b. The methods or interventions used to achieve the goals and objectives;
 - c. Possible adverse or uncomfortable effects of the plan;
 - d. Possible alternatives to the plan.

C. Consent for Treating a Minor Aged 14 or Older

1. 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.
2. 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 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.
3. Services provided to a minor under this section shall be limited to not more than 12 sessions or 4 months per request for services. After the 12th session or 4th 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. Consent for Medication

The primary clinician or designated medical staff shall ensure that consent is obtained and information is provided according to agency policy and procedures.

E. Consent for Surgery

The primary clinician or involved medical or emergency staff shall ensure that consent is obtained according to Section 716 of the Mental Health Code.

F. Consent for Electro convulsive Therapy (ECT)

The primary clinician, or involved medical or emergency staff, shall ensure that consent is obtained according to Section 717 of the Mental Health Code.

G. Consent for Photographs, Audiotapes, fingerprints, and Use of one-way Glass

1. Prior to photographing, videotaping, audio taping, and/or using one-way vision mirrors the primary provider shall have the service recipient, his/her guardian or a parent of a minor child sign a Consent form. The primary provider shall explain to the service recipient that he/she has the right to keep his/her identity confidential.
2. Photographing, videotaping, audio taping, and/or using one-way vision mirrors may be used under the following conditions:
 - a. To provide education and training which includes:

NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS

POLICY TITLE: Informed Consent

PAGE: 4 of 5

MANUAL: Recipient Rights

SECTION: Rights

ORIGINAL EFFECTIVE DATE: 9/15/00

BOARD APPROVAL DATE: 11/25/13

REVIEWED/REVISED ON DATE: 6/27/18

CURRENT EFFECTIVE DATE: 7/1/18

- Reviewing the effectiveness of the clinical treatment.
 - Providing an objective self-critique of the service recipient's demeanor to be used in teaching ADL skills, interviewing skills, etc.
 - Providing public awareness of mental health services.
- b. For informational or purely personal or social purposes. In these circumstances a service recipient's refusal will be respected.
3. Photographs taken of the service recipient in order to assist in identifying the service recipient 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 a service recipient (e.g. law enforcement) the photograph shall be returned to the primary provider and kept a part of the recipient's clinical record. In addition, the primary provider shall inform the outside party that the copy of the photograph is to be returned to NBHS once the name/identity of the service recipient is made.
- The primary provider shall document in the service recipients' progress notes the need for making a copy of the service recipient's photograph. The primary provider shall also document in the service recipient's progress notes the date the photograph was given to the outside party and the date the copy of the photograph was returned to Northpointe Behavioral Healthcare Systems.
 - Video and audio tapes will be stored in a secured area with the clinical record.
4. The primary provider shall review the need to keep photographs and/or videotapes of the service recipient at the time of the Periodic review. The primary provider shall determine if the photographs and/or Videotapes are to be destroyed or given to the service recipient.
5. Photographs and/or videotapes of the service recipient shall be given to him/her when they are no longer essential for treatment or destroyed upon discharge from Northpointe Behavioral Healthcare Systems, whichever comes first.

H. Consent for Services Rendered via Video Teleconferencing

1. The primary clinician shall review the process with and assure that the individual/parent of a minor/guardian is informed that receiving services via video teleconferencing is optional and any refusals shall be respected.
2. The primary clinician shall ensure that consent is obtained prior to any video conferencing sessions.
3. The individual will be told who is present at the remote site at the time of the videoconference session.
4. The individual will be told that in the event of technical difficulties that technical staff may be called to assist.
5. The individual will be told that his/her confidentiality shall be safeguarded as if receiving any other service from Northpointe.
6. A videoconference session will only be taped if the individual/parent of a minor/guardian agrees and signs a consent indicating approval. All videotapes of session will be stored in a secure location within the clinical record room. All videotapes will be destroyed after one year or anytime at the request of the individual.
7. The individual/parent of a minor/guardian may withdraw consent for receiving services via videoconferencing and/or taping of videoconference services at any time.

I. Consent for Media Release

The primary clinician shall ensure that consent is obtained prior to releasing any recipient photographs, names, or recipient information to the media.

NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS

POLICY TITLE: Informed Consent

PAGE: 5 of 5

MANUAL: Recipient Rights

SECTION: Rights

ORIGINAL EFFECTIVE DATE: 9/15/00

BOARD APPROVAL DATE: 11/25/13

REVIEWED/REVISED ON DATE: 6/27/18

CURRENT EFFECTIVE DATE: 7/1/18

All these forms must be thoroughly completed and witnessed.

Audiovisual recordings and/or photographs of treatment/training sessions made by individuals in service, guardians, and/or family members are not permitted.

At times, it may be necessary to obtain consent/release verbally. If this is the case, it **MUST** be witnessed by a second individual and the **WRITTEN SIGNATURE** be obtained within two (2) weeks. In rare instances (i.e. due to severe physical impairment), where a written signature can never be obtained, please document on the form that this is the case.

REFERENCES AND LEGAL AUTHORITY:

Act 258 of the Public Acts of 1974, as amended (Mental Health Code) Sections 100a, 716, 717, 724.

Michigan Department of Health and Human Services Administrative Rule 7003, as amended.

NBHS Policy/Procedure – Informed Consent for Medication Treatment

42 CFR Part 2