

## **Consent to Mental Health Treatment for Minors**

### **Office of Mental Health and Substance Abuse Services Bulletin: OMHSAS-23-01: Act 65 of 2020:**

#### **Summary:**

The Office of Mental Health and Substance Abuse Services (OMHSAS) issued this Bulletin to provide guidance for the implementation of Act 65 of 2020 (“Act 65”) (35 P. S. §§ 10101.1-10101.2).

Act 65 governs who can provide consent for voluntary mental health treatment of minors who are 14 years of age and less than 18 years of age (“minor”), in both inpatient and outpatient settings. Act 65 also addresses which individuals may grant consent to the release of a minor’s medical records. The intent of Act 65 is to enable behavioral health treatment to begin when consent is received from either the minor, parent, or legal guardian.

#### **Outpatient Treatment**

##### ***When a minor provides consent to outpatient treatment:***

A minor can provide consent to outpatient treatment without the consent of a parent or legal guardian. When a minor consents to outpatient treatment, a parent or legal guardian cannot be notified of the initiation of treatment unless the minor consents to notification of the parent or legal guardian. In addition, neither Act 65 nor the MHPA address if a parent or legal guardian can object to voluntary outpatient treatment for which a minor has provided consent.

Outpatient treatment can begin with the minor’s consent. If a minor revokes their consent to outpatient treatment, the revocation is effective unless their parent or legal guardian provides consent to continue outpatient treatment.

***When a parent or legal guardian provides consent to outpatient treatment:***

A parent or legal guardian can provide consent to outpatient treatment without the consent of a minor. A recommendation from a physician is not required for outpatient treatment. In addition, neither Act 65 nor the MHPA address if a minor can object to voluntary outpatient treatment for which a parent or legal guardian has provided consent.

Outpatient treatment can begin with a parent's or legal guardian's consent. If a parent or legal guardian revokes their consent to outpatient treatment, the revocation is effective unless the minor provides consent to continue outpatient treatment.

**Inpatient Treatment**

Section 7103.1 of the MHPA defines Inpatient ("IP") treatment as mental health treatment that requires full or part-time residence in a facility. This bulletin describes what occurs when either the minor, parent or legal guardian objects to IP treatment.

***When a minor provides consent to IP treatment:***

In instances when a minor is providing consent to their own IP treatment, the consent must be consistent with the MHPA. This means the minor's consent must be in writing and obtained only after they have received an explanation of the treatment and their rights and have demonstrated that they substantially understand the nature of the treatment. Further, when a minor consents to IP mental health treatment, the MHPA requires the director of the facility to notify the minor's parent, legal guardian, or person standing in loco parentis, to inform them of their right to file an objection to the IP treatment. (50 P.S. §§ 7201, 7203, 7204)

If the parent or legal guardian objects to the IP treatment, they can file a petition with the court of common pleas to withdrawal from or request a modification to the treatment being provided. Act 65 does not provide a timeline or additional information on the petition process.

IP treatment can begin with the minor's consent and continue unless IP treatment is no longer necessary or a court orders treatment to be stopped.

***When a parent or legal guardian provides consent to IP treatment:***

A parent or legal guardian of a minor can provide consent to IP treatment, without the consent of the minor. IP treatment can be provided based on consent from a parent or legal guardian AND on the recommendation of a physician who has examined the minor. If consent is provided by a parent or a legal guardian, the involuntary treatment process should not be initiated under the MHPA.

When a parent or legal guardian grants consent, a minor may object to treatment. IP providers should attempt to ascertain why the minor is objecting to treatment and take reasonable steps to assist the minor in understanding how IP treatment will benefit them, including how the minor's objections may be addressed.

If the minor expressly objects to treatment, the facility director or their designee must provide the minor with a form to withdrawal from or modify treatment. The form must be submitted to the court by the facility director or their designee. Based on feedback provided to OMHSAS, these forms are not always readily available and the lack of such a form may delay or otherwise hinder a minor from receiving IP treatment. To address these concerns, OMHSAS has developed a petition template (see Attachment B) that may be used by minors to either withdrawal from or modify IP treatment.

After the petition is filed with the court by the facility director or their designee, the court must assign the minor an attorney and schedule a hearing within 72 hours.

IP treatment can begin upon the consent of a parent or legal guardian, with the recommendation of a physician who has examined the minor. IP treatment can continue unless IP treatment is no longer necessary or a court orders treatment to be stopped.

## **Consent for the Release of a Minor's Mental Health Records**

Minors control the release of their mental health treatment records in all circumstances except in the following situations:

- Parents or legal guardians **have the right to be provided with information necessary to inform their consent for the minor's mental health treatment.**
- When a parent or legal guardian has consented to the mental health treatment of a minor, **the parent or legal guardian can also consent to the release of the minor's**
  - **Medical records** to the minor's current mental health provider
  - **Prior mental health records** to the minor's current mental health treatment provider, if the information is **deemed pertinent by the current mental health provider.**
  - **Mental health records** to the primary care provider, if the current mental health treatment provider determines that the release **will not be detrimental to the minor**

The release of records **with the consent of a parent or legal guardian** are **limited to direct release** from one mental health treatment provider to another or to a primary care provider.