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SUBJECT: CONSENT TO MENTAL HEALTH TREATMENT FOR MINOR CHILDREN	BY:   Teresa Miller Secretary of Human Services Dr. Rachel Levine Secretary of Health
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SCOPE:

County MH/ID Programs
County Human Services Administrators
Licensed Mental Health Facilities
Licensed Health Providers

PURPOSE:

Act 147 of 2004 (“Act 147”), 35 P.S. §§ 10101.1-10101.2, addresses who can provide consent to voluntary mental health treatment for minors who are 14 years of age and less than 18 years of age (“minors”) in both inpatient and outpatient settings. Act 147 should be read and implemented in conjunction with the Mental Health Procedures Act (“MHPA”), which is mentioned in Act 147 and which applies to involuntary and inpatient treatment. See 50 P.S. § 7103, 55 Pa. Code § 5100.4(a).

CONSENT TO TREATMENT FAQs

Outpatient Treatment

- **Who can consent to outpatient care?** Minors can consent to outpatient mental health examinations and treatment for themselves without parental consent.

A parent or legal guardian of a minor can also provide consent to outpatient treatment without the minor’s consent.

- **Can the non-consenting person revoke consent of the other?** No. The consent of one is sufficient without the consent of the other. A minor cannot abrogate consent that has been provided by a parent or guardian and, likewise, the parent or guardian cannot abrogate consent that a minor has provided.

<p>COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO: Office of Mental Health and Substance Abuse Services, Bureau of Policy, Planning & Program Development, P.O. Box 2675, Harrisburg, PA 17105. General Office Number 717-772-7900.</p>
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- **Can a parent or guardian object to outpatient treatment for which a minor has provided consent?** No. Neither Act 147 nor the MHPA provides a procedure through which a parent or guardian can object to voluntary outpatient treatment for which a minor has provided consent.
- **Can a minor object to outpatient treatment for which a parent or guardian has provided consent?** No. Neither Act 147 nor the MHPA provides a procedure through which a minor can object to voluntary outpatient treatment for which a parent or guardian has provided consent.

Inpatient Treatment

- **Who can consent to inpatient care?** Act 147 provides that minors can consent to inpatient mental health care for themselves without parental consent. As is the case under the MHPA, the consent must be in writing and obtained only after the minor receives an explanation of the treatment and his or her rights and demonstrates that he or she substantially understands the nature of the treatment. 50 P.S. §§ 7201, 7203.

A parent or legal guardian of a minor can also provide consent instead of the minor on the recommendation of a physician who has examined the minor, without the need to initiate the involuntary treatment process pursuant to the MHPA.

- **How is inpatient treatment defined?** Act 147 defines inpatient treatment as “all mental health treatment that requires full-time or part-time residence in a facility that provides mental health treatment.”
- **Can the non-consenting person revoke consent of the other?** No. The consent of one is sufficient without the consent of the other. A minor cannot abrogate consent that has been provided by a parent or guardian and, likewise, the parent or guardian cannot abrogate consent that a minor has provided.
- **Can a parent or guardian object to inpatient treatment for which a minor has provided consent?** Yes. Act 147 does not restrict or alter the right of a parent or guardian to object to inpatient treatment initiated by the minor. Under the MHPA, a parent or legal guardian may file a written objection with the facility or the county administrator, who will arrange for a hearing to determine whether the treatment is in the best interest of the minor. See 50 P.S. § 7204, 55 Pa. Code § 5100.74.
- **What happens if the consenting person revokes consent?** If the person who has provided consent revokes it, the revocation is effective unless the other person authorized by Act 147 or the MHPA provides consent to continued inpatient treatment.
- **Can a minor object to inpatient treatment for which a parent or guardian has provided consent?** Yes. When a minor is admitted on the consent of a parent or guardian, the facility director must provide to the minor an explanation of the treatment and a statement of rights, including the right to object to treatment by filing a petition in

court. If the minor wishes to object to treatment, the facility must provide a form for the minor to request withdrawal from or modification of treatment. The minor remains in the facility during this process. The facility director must file the signed petition in court of common pleas where the facility is located. Act 147 does not specify a time frame but it should be filed promptly. Act 147 provides that the court must appoint an attorney and schedule a hearing to be held within 72 hours of the filing of the petition.

Can a parent object to inpatient treatment consented to by another parent? Yes. If one parent provides consent to treatment, the other parent, who has legal custody rights, can object to inpatient treatment by filing a petition in the court of common pleas where the minor resides with a hearing to be held within 72 hours of the filing of the petition.

CONTROL OF CONFIDENTIALITY OF MEDICAL RECORDS, INPATIENT AND OUTPATIENT SETTINGS

General Rules

- **Who controls release of medical records?** Control over the release of medical records generally resides with the person who has provided the consent to treatment. Under Act 147, when the minor has provided consent to treatment and understands the nature of the records and the purpose of releasing them, he or she controls release of the records. See also 55 Pa. Code § 5100.33(a). When a parent or guardian has provided consent to treatment, the parent or guardian has the right to receive information necessary to consent to specific treatment options, including symptoms, conditions to be treated, medications, treatments, risks, benefits, and expected results. A parent or guardian who has provided consent to treatment may also consent to release of records to the current mental health treatment provider and, if it would not be detrimental to the minor, to the minor's current primary care provider. If deemed pertinent by the minor's mental health treatment provider, information regarding prior mental health treatment, for which the minor had provided consent, may also be released to other current mental health treatment and primary care providers. Release of mental health records with the consent of a parent or guardian is limited to release directly from one provider of mental health treatment to another provider of mental health treatment or from one provider of mental health treatment to the primary care provider.

A link to the Act can be found at:

<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2003&sessInd=0&billBody=S&billTyp=B&billNbr=0137&pn=1921>