

**Department of Mental Health
TRANSMITTAL LETTER**

SUBJECT

Informed Consent for Mental Health Treatment for Adults Receiving Services in the Community

POLICY NUMBER

DMH Policy 414.2

DATE

FEB 14 2011

TL# 149

Purpose. The purpose of this policy is to clarify the informed consent process for the provision of outpatient mental health treatment, including treatment with psychiatric medications.

Applicability. This policy applies to all DMH certified Mental Health (MH) providers.

Policy Clearance. This policy was cleared through the Chief Clinical Officer.

Implementation Plans. A plan of action to implement or adhere to a policy must be developed by designated responsible staff. If materials and/or training are required to implement the policy, these requirements must be part of the action plan. Specific staff should be designated to carry out the implementation and program managers are responsible to follow through to ensure compliance. Action plans and completion dates should be sent to the appropriate authority. Contracting Officer Technical Representatives (COTRs) must also ensure that contractors are informed of this policy if it is applicable or pertinent to their scope of work. Implementation of all DMH policies shall begin as soon as possible. Full implementation of this policy shall be completed within sixty (60) days after the date of this policy.

Policy Dissemination and Filing Instructions. Managers/supervisors of DMH and DMH contractors must ensure that staff is informed of this policy. Each staff person who maintains policy manuals must promptly file this policy in Volume I of the DMH Policy and Procedures Manual and contractors must ensure that this policy is maintained in accordance with their internal procedures.

*If any DMH policies are referenced in this policy, copies may be obtained via DMH Intranet on the dmhweb or the District Internet at www.dmh.dc.gov Hard copies of DMH policies may be obtained from DMH Policy Support Division by calling (202) 671-4070.

ACTION

REMOVE AND DESTROY

None

INSERT

**DMH Policy 414.2 Informed Consent for
Mental Health Treatment for Adults
Receiving Services in the Community**



Stephen T. Baron Date 2/14/11
Director, DMH

GOVERNMENT OF THE DISTRICT OF COLUMBIA  DEPARTMENT OF MENTAL HEALTH	Policy No. 414.2	Date FEB 14 2011	Page 1
	Supersedes NONE		

Subject: Informed Consent for Mental Health Treatment for Adults Receiving Services in the Community

1. **Purpose.** The purpose of this policy is to clarify the informed consent process for the provision of outpatient mental health treatment, including treatment with psychiatric medications.
2. **Applicability.** This policy applies to all DMH certified Mental Health (MH) providers.
3. **Authority.** Department of Mental Health Establishment Amendment Act of 2001 (D. C. Official Code § 7-1231.01, *et seq.*), D.C. Official Code § 21-2202 *et seq.*, Health-Care Decisions; Mental Health Rehabilitation Services (MHRS) Standards, Chapter 34 of Title 22-A DCMR; and Consent to Treatment, Chapter 1, Title 22-A DCMR.
4. **Policy.** Informed consent shall be obtained and documented for all mental health treatment, including treatment with medications. Informed consent is not required in an emergency (see Section 7).
5. **Definitions.**
 - 5a. **Consumer.** A person 18 years of age or older eligible to receive mental health services and mental health supports as defined in § 102 of the Act (D.C. Official Code § 7-1131.02(18) and (19)).
 - 5b. **Emergency.** A situation in which a consumer is experiencing a mental health crisis and in which the immediate provision of mental health treatment is necessary to prevent serious injury to the consumer or others.
 - 5c. **Informed consent.** Consent voluntarily given to treatment after the mental health (MH) provider presents the consumer with information about the proposed mental health services, mental health supports, or treatment, in language and a manner that the consumer can understand.
 - 5d. **Mental health (MH) provider.** Any individual or entity, public or private, providing services to consumers in the community, which is licensed or certified by the District to provide mental health services and mental health supports, or that has entered into an agreement with DMH to provide mental health services and supports.
 - 5e. **Substitute decision-maker.** An individual authorized to make medical decision on behalf of a consumer who lacks the capacity to make or communicate his or her own medical decisions (See Section 8).

6. Procedures.

6a. The MH provider shall discuss and document at a minimum the following required elements to obtain informed consent for mental health treatment¹:

- (1) The reason for the treatment;
- (2) The potential benefits of the proposed mental health treatment; and
- (3) Any feasible alternatives to the proposed mental health treatment.

6b. For **psychiatric medications**, the MH provider shall also discuss the following information with an opportunity for the consumer, with the consent of the consumer, to ask questions about the proposed medication prior to providing written informed consent²:

- (1) The name and dose of the medication being prescribed;
- (2) The purpose of administering the medication;
- (3) Potential common side effects of the medication;
- (4) Potential risks and benefits of taking the medication;
- (5) Information about feasible alternative treatments;

6c. If a consumer with the capacity to make health care or treatment decisions refuses mental health treatment, the MH provider shall document the refusal in the consumer's clinical record.

6d. If a consumer verbally consents to the recommended medications, but refuses to sign a consent form, the prescriber shall record the attempts (See Exhibit 2, Informed Consent to the Use of Psychiatric Medications - Adults), on the consent form or document the informed consent in the consumer's clinical record.

6e. If a consumer who has given informed consent to treatment decides that he or she no longer consents to this treatment, the MH provider shall document the decision in the consumer's clinical record. A MH provider may not continue to provide a specific mental health treatment to a consumer who withdraws his or her consent to that particular form of treatment.

6f. A consumer who is eighteen (18) years of age or older who is receiving mental health services and supports in the community is presumed to have the legal capacity to make treatment decisions unless:

¹ See Exhibit 1, a DMH sample form for mental health treatment, and Exhibit 2, a DMH sample form for psychiatric medication; however, the MH provider may use its own form containing the required elements.

² Written informed consent may be in the form of formalized signed Informed Consent Form that includes the elements found in Exhibit 1 and 2, or, documented by the MH provider in the consumer's clinical record (i.e., progress notes). The lack of a written acknowledgement of the treatment by the consumer or substitute decision-maker must be justified by the MH provider in writing.

(1) A court has declared the consumer incompetent to make treatment or health care decisions and has appointed a guardian to make such decisions (see Section 8);

(2) It has been determined that the consumer lacks the capacity to make a health care decision (see Section 8); or

(3) A court has explicitly ordered a consumer to participate in a specific form of treatment or to take medication.

7. Informed Consent Not Required in an Emergency.

7a. If an emergency exists, the MH provider shall obtain a written opinion from either the consumer's treating physician stating that delay in obtaining informed consent to the mental health services, mental health supports or treatment is likely to result in serious injury to the consumer (Emergency Opinion).

7b. If the MH provider has information that the consumer would not consent to emergency treatment based on the consumer's religious beliefs, the MH provider must obtain a court order prior to administering treatment that would terminate the emergency.

7c. After receipt of the Emergency Opinion, the MH provider shall provide mental health services, mental health supports or treatment to the extent necessary to terminate the emergency.

8. Informed Consent from Substitute Decision-maker.

8a. When the treating psychiatrist or psychologist believes that the consumer lacks sufficient mental capacity to appreciate the nature and implications of a health-care decision, make a choice regarding the alternatives presented, or communicates that choice in an unambiguous manner, the psychiatrist or psychologist should seek certification of the consumer's incapacitation.

(1) Certification of incapacity to make a treatment decision requires a determination by two physicians, one of whom shall be the consumer's treating psychiatrist, that the consumer lacks the capacity to understand the decision to be made, or to make or communicate a decision about the proposed treatment.

(2) A consumer shall not be deemed incapacitated if the consumer is capable of understanding the decision to be made, making the decision, and communicating the decision, but refuses to consent to a proposed treatment or makes a decision different than the MH provider would prefer.

8b. If a consumer has been certified as incapacitated in accordance with D.C. Official Code § 21-2204, the MH provider shall seek informed consent to the proposed mental health service, mental health support or course of treatment as follows:

(1) From the consumer's designated attorney-in-fact, if the consumer has executed a valid durable power of attorney for health care; or

(2) From a substitute health care decision-maker in accordance with D.C. Official Code §

21-2210.

8c. If a consumer has been certified as incapacitated in accordance with D.C. Official Code § 21-2204 and the MH provider is not able to obtain informed consent from either a designated attorney-in-fact or a substitute health care decision-maker, the MH provider shall petition the court for appointment of a guardian and seek informed consent from the guardian appointed by the court.

8d. A MH provider shall seek appointment of a guardian for a consumer in accordance with subchapter V of Chapter 20 of Title 21 of the District of Columbia Official Code, if:

(1) A consumer remains incapacitated for purposes of making a particular health care decision for more than thirty (30) days following certification of incapacitation.

(2) The consumer does not have an attorney-in-fact designated in a durable power of attorney document available to make a decision about the delivery of mental health services, mental health supports or treatment to the consumer.

8e. The substitute decision-maker responsibilities are as follows:

(1) Act in accordance with the consumer's treatment preferences as expressed in an advance directive or a declaration of advance instructions.

(2) Make a decision regarding mental health treatment which is based on the consumer's expressed treatment preferences, except for good cause as documented in the consumer's clinical records, and shall never be overridden for the convenience of the MH provider.

(3) In the absence of an advance directive or declaration of advance instructions, shall grant, refuse or withdraw consent to mental health treatment based on the known wishes of the consumer or, if the wishes of the consumer are unknown and cannot be ascertained, on a good faith belief as to the best interests of the consumer per D.C. Official Code § 21-2210(b).

(4) May consent to the administration of medication for the consumer only in accordance with the consumer's treatment preferences as expressed in a durable power of attorney document or in a declaration of advance instructions for mental health treatment.

8f. A MH provider shall document whether the substitute decision-maker grants, refuses or withdraws consent to mental health treatment on behalf of a consumer in the consumer's clinical record.

8g. At least one (1) witness shall be present whenever a substitute decision-maker grants, refuses or withdraws consent to treatment on behalf of a consumer.

9. Responsibilities of MH Providers.

9a. Establish internal policies and procedures. The MH provider shall establish policies and procedures in compliance with this policy to ensure informed consent are obtained prior to the provision of mental health treatment.

9b. Document informed consent (e.g., forms). The MH Provider may use the DMH forms for informed consent or its own forms as long as the required elements are included. Documentation of informed consent must be maintained in the consumer's clinical record.

9c. Provide information and education. Familiarize consumers or, as applicable, substitute decision-maker or power-of-attorney holder, and their family members about psychiatric medications (e.g., names and indications for use of commonly prescribed psychiatric medications, monitoring for effectiveness and possible side effects, and maintaining medication logs for those administering these medications).

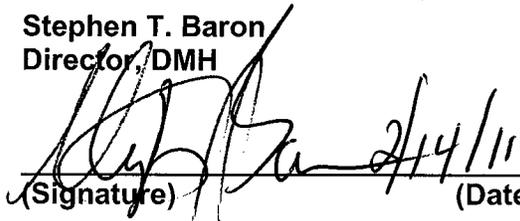
9d. Maintain records for incapacitated consumers. If a consumer has been determined to be incapacitated in accordance with D.C. Official Code §21-2204, the MH provider should maintain within the consumer's records the certificates of incapacity, the guardianship or power-of-attorney documentation (if applicable), or other information on the consumer's substituted health-care decision-maker as identified in accordance with D.C. Official Code §21-2210.

10. Exhibits.

- 1 Informed Consent to Mental Health Treatment
- 2 Informed Consent to use of Psychiatric Drugs

Approved By:

Stephen T. Baron
Director, DMH


(Signature) 2/14/11
(Date)

GOVERNMENT OF THE DISTRICT OF COLUMBIA



Department of Mental Health

**INFORMED CONSENT TO MENTAL HEALTH TREATMENT
(FOR ADULTS)**

PLEASE READ CAREFULLY BEFORE SIGNING THIS FORM. THE MENTAL HEALTH TREATMENT THAT ARE AVAILABLE TO YOU MUST BE EXPLAINED PRIOR TO YOUR SIGNING.

I hereby consent to receive mental health treatment from _____
(Name of Mental Health Provider (Agency))
for the purpose of addressing mental health concerns/symptoms. I understand that additional information about the purpose, side effects and potential risks and benefits, as well as information about feasible alternative treatments, will be further explained to me during the treatment process.

Printed name of Consumer: _____

Consumer's Signature

Date

If a consumer has been certified as incapacitated, the attorney-in-fact or a substitute health care decision-maker shall complete the portions below:

I have the legal right to accept or refuse mental treatment for

Print Consumer's Name

and I hereby consent to him/her receiving mental health treatment for the purpose of addressing mental health concerns/symptoms.

Signature

Date

Printed Name

Relationship to consumer

IMPORTANT NOTE: Documentation establishing informed consent to mental health treatment shall be maintained in consumer's clinical records.

GOVERNMENT OF THE DISTRICT OF COLUMBIA



Department of Mental Health

**INFORMED CONSENT FOR USE OF PSYCHIATRIC MEDICATION(S)
(FOR ADULTS)**

Printed Consumer Name: _____ Date of Birth _____

Reason for Treatment:

Please check one of the following:

() I have had the opportunity to receive information about my medications from the prescriber, and I consent to this treatment. I understand I can ask questions about my medicines at any time. The information includes the following: name and dose of the medication, purpose; potential common side effects, risks and benefits and feasible alternatives.

() I have had the opportunity to discuss information about the medications with the prescriber, and I **refuse** to consent to the medications recommended. I understand that my doctor will continue to offer me the chance to take medicine, and information about it, but that I may still continue to refuse the medicine.

() Consumer verbally consents to the recommended medications, but refuses to sign because:

Record of attempts: Initials of Prescriber _____ Date _____
Initials of Prescriber _____ Date _____

Medication Name	Route (√ below)		Daily Dose Range	For Modification:			
	Oral	Inject		Date	Consumer Initials	Date	Consumer Initials

Consumer Signature	Consumer PRINTED Name	Date
Substitute Decision-maker's Signature (as Applicable)	Substitute Decision-maker's PRINTED Name (as Applicable)	Date
Authorized Prescriber Signature	Authorized Prescriber Signature & Credential	Date

IMPORTANT NOTE: Documentation establishing informed consent to mental health services, mental health support, or treatment shall be maintained in consumer's clinical records.

GOVERNMENT OF THE DISTRICT OF COLUMBIA



Department of Mental Health

**INFORMED CONSENT FOR USE OF PSYCHIATRIC MEDICATION(S)
(FOR ADULTS)**

Instructions for DMH Form 145

Purpose:

1. To serve as a legal record of the consumer's informed consent to take psychiatric medication as part of a treatment regimen;
2. To document that the consumer has been offered information about the medications being prescribed.

Instructions

1. The consumer is to receive information about the medication(s) before the form is completed.
2. This form can accommodate up to three (3) medications, assuming the consumer consents to all.
3. The medication(s) and dosage range(s) are entered into the table.
4. For changes in dose range or route, modifications can be made on this form by having the consumer initial and date in the appropriate column. For adding new agents, a new form should be used.
5. If the consumer consents to medications, check the applicable box.
 - a. If the consumer agrees, then the consumer and prescriber sign and date at the bottom.
 - b. If the consumer cannot or will not sign, the prescriber fills in the reason, and signs at the bottom with a witness.
 - c. If the consumer is willing to document refusal of medications, this box can be checked and the prescriber and consumer can sign and date at the bottom.
6. If the consumer signs with a mark, a witness is needed.
7. A consumer may withdraw consent at any time by notifying the prescriber. The reason for the withdrawal should be documented in the progress notes, and the medication order should be discontinued.