

TDMHSAS BEST PRACTICE GUIDELINES

Obtaining Informed Consent for Children and Adolescents

Informed Consent

There are considerations that must be taken into account involving every encounter with children and adolescents. First and foremost is the issue of informed consent. Informed, voluntary consent, based upon appropriate information, must be obtained from the service recipient, if he or she has the capacity to give it, or from an otherwise legally authorized representative.

No person with mental illness or serious emotional disturbance, hospitalized or admitted, whether voluntarily or involuntarily, or ordered to participate in nonresidential treatment or service under Title 33 of the Tennessee Code Annotated (TCA) shall, solely by reason of the hospitalization, admission, or order, be denied the right to give informed consent to treatment, unless the service recipient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity or the denial is authorized by state or federal statute [TCA § 33-3-102(a)]. The Rules of the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) define “informed consent” as “consent voluntarily given in writing after sufficient explanation and disclosure of the subject matter involved to enable the person whose consent is sought to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion. Informed consent for psychotropic medication can be obtained from a person who is capable of understanding after adequate explanation a medication’s expected benefits, possible risks and side effect, the advantage and risk or alternative treatments, and the prognosis if medication is not given” [Rule 0940-1-1-.02(i); January 1999, Revised]. Informed, voluntary consent, based upon appropriate information, must be obtained from the service recipient if he or she has the capacity to give it. In the Tennessee Healthcare Decisions Act, capacity refers to the individual’s ability to understand the significant risks, benefits, and alternatives to the healthcare, including mental healthcare, being proposed as well as the individual’s ability to make and communicate decisions about such health care [TCA §§ 68-11-1802 *et seq.*]. No person shall make decisions for a service recipient on the basis of a claim to be the service recipient’s conservator, legal guardian, guardian ad litem, caregiver under TCA Title 34, Chapter 6, Part 3, or to be acting under a durable power of attorney for health care under TCA Title 34, Chapter 6, Part 2 that specifically includes powers related to decisions about mental healthcare, until the person has presented written evidence of the person’s status [TCA § 33-3-102(b)].

Fundamental principles of informed consent for youth in state custody

For children in state custody to receive appropriate behavioral health services, DCS facilitates the informed consent process by involving the parent/guardian/older youth or by providing the consent as appropriate.

DCS procedures involving children in custody state that every individual has a right to:

1. Control what is right for his/her bodily integrity.

2. Receive information regarding prescribed treatments, services, or tests, including risks and benefits of the prescribed treatments, services, or tests.
3. Obtain information in sufficient detail to be able to make an informed decision regarding consent or refusal of the treatments, services, or tests.
4. Have the behavioral healthcare provider make available written and/or oral explanation of any and all prescribed treatments, services, or tests in language the individual fully understands, and that typically includes the following:
 - a. Diagnosis for which the treatments, services, and/or tests are prescribed;
 - b. Nature of the treatments, services, and/or tests/procedures;
 - c. Both brand and generic names of medications, dosages, and frequencies of administration, when applicable;
 - d. Expected recovery schedule for procedures;
 - e. Any expected benefits;
 - f. Known side effects and risks;
 - g. Whether alternatives are available; and
 - h. Prognosis if prescribed treatments, services, and/or tests are not utilized (DCS, 2011).

Capacity to give informed consent

Legally all parents in Tennessee have decision-making power over their own minor children. Guardianship is the term used to describe the legal relationship (ARC, 2011). Tennessee, however, recognizes the ‘mature minor exception’ to permission for behavioral health treatment, which defines the age of consent to mental health treatment and/or services as 16 years of age. A “minor child” is defined at TCA §33-1-101 as a person under 18 years of age, but TCA §33-8-202 that states if a child with serious emotional disturbance or mental illness is 16 years of age or older, the child has the same rights as an adult with respect to, among other things, confidential information. Further TCA §33-3-104 lists a service recipient 16 years of age and over as one of the persons authorized to consent to disclosure of confidential information (TDMHSAS Policies and procedures, 2011). Thus, adolescents 16 years of age and older in Tennessee are presumed to have the maturity to consent to medical care, including mental health care, and can sign their own consents for treatments, services, and/or tests (DCS, 2011).

Since young people in DCS custody may provide their own consents for mental health treatment, additional consent from the parent, legal guardian or legal custodian is not needed. Yet some mental health providers, at their discretion, may choose not to treat 16-year-old youths without parental involvement. In those situations and the 16-year-old youth does not want his/her parents involved, another mental health treatment provider should be sought (DCS, 2011). Detailed policy and procedures related to informed consent requirements for children in state custody, and capacity in particular, can be found in DCS’s Administrative Policies and Procedures: 20.24.

References

Association for Retarded Citizens. (2011 September). Conservatorship and alternatives to conservatorship: A guide for families. Nashville: Author.

Tennessee Code Annotated (TCA), Title 33.

Tennessee Code Annotated (TCA), Section 68-11-1802 *et seq.*

Tennessee Department of Children's Services (DCS). (2011, August 15). *Administrative policies and procedures: 20.24.*

Tennessee Department of Mental Health and Substance Abuse Services. (1999, January – Revised). *Rule 0940-1-1-.02(i).*

Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS). (2011, February 3). *Policies and procedures: Accounting of disclosures of protected health information (PHI).*

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