



Monterey County Behavioral Health Policy and Procedure

Policy Number	320
Policy Title	Minor Consent
References	<ul style="list-style-type: none">• Health Insurance Portability and Accountability Act (HIPAA)• California Civil Commitment of Minors Act (W&I 5585 et seq)• California Family Code 6924(b), 6925, 6926, 6928, 6927, 6928, 6929• California Health and Safety Code section 124260• California Family Code 6550, 6552; Family Code 6910• California Family Code 7120; 7140 et seq.; 7002, 7050(e)(1); 6922
Form(s)	<ul style="list-style-type: none">• Minor Consent
Effective	

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39 I. Purpose

40 The purpose of this policy is to provide guidance regarding consent and
41 confidentiality for health care services for minors receiving services from
42 Monterey County Behavioral Health staff. The terms *health care* and *medical*
43 *care* include assessment, care, services or referral for treatment for general
44 medical conditions, mental health issues, and alcohol and other drug treatment.
45 This policy includes services to minors who are treated as "adults" under the law
46 for purposes of medical consent (emancipated and self-sufficient minors), and
47 minors seeking *sensitive services* for which they are qualified to provide their
48 own consent under the law. It also covers minors who do not meet any of the
49 criteria for minor consent and for whom parent or legal guardian consent is
50 required.

51

52

53 II. General Consent Policy

54 A. The Right to Consent

55 It is well recognized that competent adults, and in many cases, competent minors
56 who are emancipated, self-sufficient, or who are seeking sensitive services, have
57 the fundamental right of self-determination over their bodies. This means that
58 they have a right to consent to, or refuse, recommended medical treatment. It
59 also means that they have a right to know how private information will be used or
60 disclosed, and how they may access their own records. These fundamental
61 principles guide all treatment and services provided by Monterey County
62 Behavioral Health.

63

64 The right to consent includes the right to "not consent" and no minor who meets
65 the legal criteria to provide their own consent will be forced to receive services
66 against his/her will except in the case of involuntary treatment under the
67 California Civil Commitment of Minors Act because they are a danger to self,
68 others, or gravely disabled, or in rare circumstances where their capacity to
69 consent/refuse services is in question and someone else, typically a parent or
70 legal guardian, consents for them.

71

72 B. When Consent Does Not Have to be Obtained

73 Individual counseling and treatment is not always requested by minors who come
74 into contact with Monterey County Behavioral Health Staff and in fact, many
75 simply come in with a friend or family member, or obtain information from

76 Behavioral Health staff on a variety of healthcare topics in an educational setting.
77 For example, information may be provided by staff in a classroom setting about
78 eating disorders, drug addiction, smoking cessation, or domestic violence.
79 Medical charts are not opened for those in attendance, and **consent is not**
80 **required** because in fact, no *care* or *medical treatment* is rendered and a
81 psychotherapist/client relationship is not created. Discussions are casual and no
82 formal assessment of the individual minor occurs.

83 84 **C. When Consent Must Be Obtained**

85 When a minor or parent/legal guardian seeks, and receives, private counseling or
86 specific individual advice from members of the Monterey County Behavioral
87 Health clinical staff, consent is required and certain information must be provided
88 to the minor and/or the parent or legal guardian. Consent will be obtained for the
89 initial assessment, outpatient or inpatient care, or for care that results in referrals
90 to outside agencies or individuals.

91 92 **D. Implied Consent in an Emergency Situation**

93 In the case of an emergency situation, consent may be implied and the treatment
94 may proceed without consent so long as there is no evidence to indicate that the
95 minor or his/her parent/legal guardian would refuse the treatment. An
96 emergency will be deemed to exist if immediate services are required to alleviate
97 severe pain, or immediate treatment or diagnosis of a medical condition is
98 required because the condition could lead to serious disability or death if not
99 immediately diagnosed and treated.

100
101 If treatment is provided without consent pursuant to the emergency exception,
102 staff should document that an emergency situation exists, and describe in the
103 Medical Record the specific details pertaining to the emergency situation. If
104 there is any doubt about whether an emergency exists, a second staff member
105 should be consulted and if he/she agrees that an emergency condition exists, the
106 second person should document his/her concurrence in the Record. Efforts to
107 obtain actual consent should continue, for example by locating the parent, even
108 after the treatment has been provided.

109
110 “Implied consent” is also used by emergency room staff in local hospitals when a
111 minor is brought in for emergency treatment and the parent or legal guardian has
112 not yet been located. If the minor is in pain, or needs immediate care to alleviate
113 a medical emergency condition, the emergency will be documented and care will
114 be provided.

115
116 If the minor is having a psychiatric emergency, and meets criteria for an
117 involuntary hold because he or she is a danger to self, others or gravely disabled
118 due to a mental condition, appropriate staff will be contacted and an application
119 for involuntary evaluation and treatment in a locked designated LPS facility will
120 be initiated. (See Policy for Involuntary Treatment.)
121

122 **E. Informed Consent**

123 Prior to initiating services, the minor and/or the parent/legal guardian will be
124 provided with sufficient information about the proposed treatment to make an
125 informed choice to go forward with the treatment. This will include discussion
126 about the nature of the minor's mental health or medical condition, and
127 information about alternatives and the risks and benefits of the proposed
128 treatment and alternatives.

129
130
131 **F. Legal Capacity to Consent**

132 A person is deemed to have legal capacity to consent to treatment if he/she has
133 the ability to understand the nature and consequences of the proposed health
134 care, including its significant benefits, risks and alternatives (including doing
135 nothing), and can make and communicate a health care decision. A person's
136 lack of mental capacity to consent to medical care may be temporary or it may be
137 permanent, and the provider should determine capacity on a case-by-case basis
138 whenever consent is sought. For example, a client who is clearly under the
139 influence of drugs or alcohol may lack capacity temporarily, but could provide
140 consent at a later time, when not so impaired.

141
142 Normally, treatment for minors (persons under age 18) requires the consent of a
143 parent or legal guardian. This is because minors, due to their age, usually lack
144 the legal capacity to give consent to medical care, regardless of their mental
145 capacity or maturity. However, there are many exceptions to this rule.

146
147 A minor does have the capacity to consent to their own treatment if he/she is
148 emancipated, self-sufficient, or meets criteria for "sensitive services" minor
149 consent. But, if none of the exceptions apply, consent to treat a minor must be
150 obtained from the parent or legal guardian.

151
152 **G. Communication Barriers**

153 If a minor, or the minor's parent or legal guardian (in the case of parent or legal
154 guardian consent) cannot communicate with the provider because of language or
155 other communication barriers, arrangements must be made for an interpreter,
156 "signer" or other help with communication before consent is obtained and before
157 treatment begins.

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159
160 **III. Minor Consent**

161 **A. Emancipated Minors**

162 Certain minors are *considered to be "adults"* under the law for purposes of
163 medical consent. They can consent to both *sensitive services* and to *non-*
164 *sensitive services*. They still have to have mental capacity to consent, but they
165 do not suffer automatic legal incapacity due to their young age.

166
167 These minors are clearly defined under the law as **emancipated minors**. Their
168 parents/legal guardians would not be financially responsible for their care and

169 would not be informed that they are receiving services unless the minor told
170 them, or authorized staff to disclose information to them after signing an
171 Authorization form permitting the disclosure.

172
173 **Definition of Emancipated Minor:** Emancipated minors include 1) minors
174 14 and older who have been emancipated by court order, 2) minors who
175 are serving in the active US military forces, and 3) minors who are married
176 or who have been married.

177
178 Before providing services to these minors staff should obtain a copy of their
179 emancipation card or court order, a copy of their military ID card, or a copy of
180 their wedding certificate and place this documentation in their medical chart.

181 182 **B. Self-Sufficient Minors**

183 Certain other minors may be treated as "*adults*" under the law for purposes of
184 medical consent. Like emancipated minors, they too can consent to both
185 *sensitive services* and to *non-sensitive services*. They still have to have mental
186 capacity to consent, but they do not suffer automatic legal incapacity due to their
187 young age.

188
189 These minors are often referred to as ***self-sufficient minors***. Their
190 parents/legal guardians are still financially responsible for their care and can be
191 informed that they are receiving non-sensitive services if the provider knows
192 where to contact them. Typically, medical or dental procedures are provided to
193 "self-sufficient" minors when their parents are not available and when it is
194 appropriate to provide the care.

195
196 The law is not clear whether non-sensitive services mental health care (e.g.,
197 medications) can be provided to a minor under the self-sufficient minor laws,
198 since the law specifically states that "medical or dental" care may be provided,
199 but does not specifically identify mental health care as a separate category. If
200 you are working with a minor aged 15 and older who meets the definition of a
201 self-sufficient minor, and you wish to provide medications or inpatient care, use
202 the chain of command to determine how to proceed on a case-by-case basis.

203
204 **Definition of Self-Sufficient Minor:** Self-sufficient minors are defined by
205 law as minors aged 15 and older who are living separate and apart from
206 their parents and who are also managing their own financial affairs
207 regardless of their source of income.

208 209 **C. Minors Seeking Sensitive Services**

210 Minors seeking certain sensitive services may be legally authorized to provide
211 their own consent to those services. The minor also controls whether or not the
212 parent will have access to records generated as a result of receiving those
213 services. When minor consent applies, sensitive services should not be provided
214 over the minor's objection; in other words, ***even if the parent provides consent,***
215 ***non-consent by the qualified minor presents ethical issues and care should***

216 **be delayed until consultation using the chain of command can be obtained**
217 **on a case-by-case basis.**

218
219 **1. Mental Capacity to Consent:** The laws that allow minors to consent to
220 sensitive services remove the legal barriers due to age. However, mental
221 capacity to provide consent and informed consent is still required. If a minor
222 who otherwise qualifies for minor consent lacks mental capacity, and insists
223 that there not be parental involvement, staff should use the chain of command
224 so that appropriate steps may be taken. For example, Social Services could
225 be notified for help in obtaining a court-appointed guardian for the minor for
226 the purpose of medical-decision making.

227
228 **2. Overview of Sensitive Services:** Sensitive services that may be provided
229 to minors without parental consent (or knowledge) fall into two categories:

- 230 • Services that can be provided to minors of any age; and
- 231 • Services that can be provided to minors 12 or older

232
233 Services that can be provided to minors of any age

234
235 **a. Rape Care and Treatment:** Minors of any age may consent to their
236 own care and treatment for sexual assault and rape. However, under a
237 separate provision of the law, if the minor is under the age of 12, or 12 and
238 older seeking sexual assault care as opposed to rape care and treatment,
239 the provider must attempt to notify the parent or guardian of the care and
240 treatment that has been provided unless the provider believes that the
241 parent or guardian committed the rape or assault.

242
243 **b. Reproductive Healthcare:** Minors of any age may seek care
244 related to the treatment and prevention of pregnancy. Reproductive
245 health care services include birth control, condoms, so-called “morning
246 after” pills, abortion, and pre-natal care and labor and delivery.

247
248 Services that can be provided to minors 12 or older

249
250 **c. Diagnosis and/or Treatment for Infectious, Contagious**
251 **Communicable Diseases:** Minors who are 12 or older who may have
252 come into contact with an infectious, contagious, or communicable
253 disease may consent to medical care related to the diagnosis or treatment
254 of the disease if the disease is one that is required by law to be reported to
255 health authorities.

256
257 **d. Prevention, Diagnosis and/or Treatment for Sexually**
258 **Transmitted Diseases:** Minors of 12 and older may consent to
259 preventative care (e.g. HPV immunization or HIV prophylactic treatment
260 after exposure), as well as diagnosis and treatment for sexually
261 transmitted diseases.

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e. Substance Abuse Programs and Minor Consent: Behavioral health care providers providing services at government funded substance abuse programs should consult policies and procedures that address the rights of participants in those programs. It should be noted that minors 12 or older may consent to medical care and counseling related to the diagnosis and treatment of a drug or alcohol related problem; since the law deems such minors to be legally competent to consent to such care, parents or guardians have no legal authority to demand drug testing of their minor children who are 12 or older. The law requires providers to involve the patient or legal guardian in the care, unless to do so would be inappropriate. The decision and reasons to involve, or not involve, the parent/legal guardian needs to be charted, as well as staff efforts to involve them.

f. Outpatient Mental Health Care/Residential Shelter Services and Minor Consent: There are two separate California laws that permit minors 12 and older to consent to outpatient mental health counseling services. The first is Family Code 6924(b). It states that minors 12 and older may consent to mental health treatment or counseling on an outpatient basis (and also, to residential shelter services), if both of the following requirements are satisfied: 1) the minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services, and 2) the minor would either present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or is the alleged victim of incest or child abuse.

The second, more recent law is found at Health and Safety Code section 124260. It removes the requirement that the provider must first determine that the minor 12 and older be “at risk” before services can be provided. Instead, the provider need only determine that the minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient mental health services. It also provides that MediCal funding may not be used as a payer source for treatment under this code section.

The attending professional person should clearly chart that any required “qualifying” criteria have been met if services are provided pursuant to either of these provisions of the law.

Involvement/Notification of Parent or Guardian: When outpatient mental health care or residential shelter services are provided, the laws state that it shall include the involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement

308 would be inappropriate. The professional person must state in the
309 record whether and when the person attempted to contact the
310 minor's parent or guardian, and whether the attempt to contact was
311 successful or unsuccessful, or the reason why, in the professional
312 person's opinion, it would be inappropriate to contact the minor's
313 parent or guardian. (Note: If outpatient mental health services are
314 provided pursuant to Health and Safety Code 124260, the law
315 states that the decision to involve, or not involve, the parents shall
316 be made in collaboration with the minor patient.)

317
318 Parent/guardian consent is required if psychotropic medications are
319 prescribed or if voluntary inpatient mental health facility services are
320 provided. Further, the minor consent laws do not authorize a minor to
321 consent to convulsive therapy or psychosurgery.

322
323 Consent from the parent is not required if the minor is involuntarily held for
324 72 hour assessment and treatment pursuant to Welfare and Institutions
325 Code 5585.2 or 5150 et seq.

326 327 **D. Financial Liability**

328 The law provides that a parent or guardian is not liable for payment for adult
329 children, for emancipated minors, or for the mental health treatment or
330 counseling provided pursuant to minor consent "sensitive services" unless the
331 parent or guardian participates in the mental health treatment or counseling, and
332 then only for the services rendered with participation of the parent or guardian.
333 The parent or guardian is not liable for residential shelter services unless the
334 parent or guardian consented to the provision of those services.

335
336 When a minor seeks services under the *sensitive services* minor consent rules,
337 the issue of whether the parent's insurance will be billed or not must be
338 discussed with the minor, and specific permission to bill the parent's insurance
339 plan should be obtained. Failure to obtain permission, or billing without the
340 minor's knowledge and consent, could result in a breach of confidentiality.

341 342 343 **IV. Parent or Guardian Consent Policy**

344 **A. Right of Parent/Guardian to Consent**

345 It is the general rule that the parent or guardian must consent to medical or
346 behavioral healthcare for minor patients, unless the minor has the right to
347 consent to the care under minor consent laws. Only one parent is necessary to
348 provide consent, and unless the provider is aware of evidence to the contrary, it
349 can be assumed that the other parent has not objected. Adoptive parents have
350 the same rights as natural parents.

352 **B. Implied Consent in an Emergency**

353 In an emergency, care may be provided to a minor without parent/guardian
354 consent if necessary to alleviate pain or prevent serious medical harm if the
355 parent or guardian has not yet been located. Unless there is evidence to indicate
356 that the parent/guardian would object to the care, consent may be implied.

357
358 **C. What the Right to Consent Includes**

359 When services are provided to a minor patient who does not qualify for minor
360 consent, the parent/guardian will have the right to consent to or refuse the
361 recommended medical treatment. The parent or guardian shall also have a right
362 to know how the minor's private medical information will be used or disclosed,
363 and how they may access that information.

364
365 **D. The Right to Refuse Treatment**

366 The parent/guardian's right to consent includes the right to refuse treatment.
367 However, health care providers who believe that the refusal of care will harm a
368 minor client should immediately discuss the situation with a supervisor and if
369 necessary, use the chain of command to determine next steps; if the refusal of
370 care triggers suspicion of medical neglect, child protective services should be
371 immediately contacted pursuant to mandated child abuse reporting requirements
372 (i.e., if the refusal of care will result in harm to the child, a report must be made).

373
374 **E. Divorced Parents**

375 In the case of divorced parents, the right to consent rests with the parent who
376 has legal custody. If the parents have "joint legal custody" usually either parent
377 can consent to the treatment unless the court has required both parents to
378 consent to the proposed care. In most situations, providers can presume that
379 either parent can consent unless there is evidence to the contrary (some
380 providers like to obtain consent from both divorced parents when treatment is
381 provided to a minor child, but again, this is not usually required by the court).

382
383 **F. Delegation of Authority to a Third Party**

384 A parent or guardian who has the legal authority to consent to care for the minor
385 child has the right to delegate this authority to other third parties (aged 18 and
386 older); for example, the parent may delegate authority to consent to medical care
387 to the school, to a coach, to a step-parent, or to a baby-sitter who is temporarily
388 caring for the child while the parent is away or at work. A copy of the written
389 delegation of authority should be kept in the Medical Record.

390
391 **G. Caregiver Affidavits and Caregiver Authority to Consent**

392 In some cases, a "surrogate parent" is raising a minor child. If this adult is a
393 *qualified relative* (often the grandparent, or an aunt or uncle, or older sibling) who
394 has stepped into the role of parent because the biological parents are no longer
395 willing or able to care for the child, he or she should fill out the **Caregiver's**
396 **Affidavit** form which is used widely throughout California.

398 These so called Caregivers who have "unofficially" undertaken the care of the
399 child are authorized by law to consent to most medical and mental health care
400 and to enroll these children in school. Once they have completed the
401 **Caregiver's Affidavit** form (which is then placed in the medical record) they may
402 consent to medical or mental health care for the minor child; however, if the
403 parent(s) returns, the "caregiver's" authority is ended, and once again the parent
404 has authority to consent to or refuse care for the child. A Caregiver's Affidavit
405 does not have to be "renewed" and can remain in effect until the parent returns,
406 or until the child turns 18.

407 408 **H. Abandoned Minors, Dependents and Wards of the Court**

409 The court has the power to authorize medical and mental health treatment for
410 abandoned minors, and for minors who are dependents or wards of the court (for
411 example, kids in foster care or juvenile hall). Furthermore, the court may order
412 that other individuals be given the power to authorize such medical and mental
413 health treatment as may appear necessary, if the parents are unable or unwilling
414 to consent. In some circumstances a court order is not necessary. For example,
415 under certain circumstances, a police officer can consent to medically necessary
416 care for a minor who is in "temporary custody."

417 418 **I. Documentation When Treating Dependents and Wards of the Court**

419 In situations where some adult other than the parent or guardian is providing
420 consent, (unless it is an emergency) care must be taken to establish a non-
421 parent's legal authority to consent to care before treatment begins. Often this
422 requires identification of the child's status as well as the ability or inclination of
423 the natural parents to provide consent. A copy of the Court Order delegating this
424 authority (to a Foster Parent, for example) should be placed in the medical record
425 before care is provided. For those treatments for which a minor can legally
426 provide his or her own consent, no court order or other authorization is necessary
427 when treating a dependent or ward.

428 429 **J. Court Authorization to Consent**

430 In rare situations a court may summarily grant consent to medical or mental
431 health treatment upon verified application of a minor aged 16 or older who
432 resides in California if consent for medical care would ordinarily be required of
433 the parent or guardian, but the minor has no parent or guardian available to give
434 the consent. A copy of the court order should be obtained and placed in the
435 minor's medical record before treatment is provided pursuant to the order.

436 437 438 **V. Obtaining Consent**

439 **A. Informing the Minor About the Law, Confidentiality, and Parental 440 Involvement**

441 When a minor presents for treatment at Monterey County Behavioral Health, the
442 minor will be provided with information about minor consent laws, and will be
443 informed about the consent process. In the case of minor consent for outpatient

444 mental health services, residential care, or substance abuse treatment services,
445 the issue of parental involvement will also be discussed. The decision about the
446 appropriateness of parental involvement may be made at the first appointment,
447 or may be delayed to a future date when the clinician feels that a more thoughtful
448 decision can be made in collaboration with the minor client. If the minor is
449 emancipated or if “sensitive services” minor consent can be obtained, the minor
450 will be asked to sign the consent to treatment form.

451

452 Both state and federal law govern how private medical information may be used
453 and disclosed by healthcare providers. Minors, or in the case of parent consent,
454 the parent or legal guardian, will be told at the outset how their protected health
455 information will be used and disclosed consistent with community standards. A
456 **Notice of Privacy Practices** that reflects Monterey County Behavioral Health
457 Policies and Procedures re: Confidentiality will be posted at each site and a copy
458 will be provided to each minor client who consents to their own care, or to the
459 parent or legal guardian who provides consent or participates in the minor’s
460 treatment.

461

462 If the minor could have consented to the care under the law, or in fact did
463 consent to the treatment, information will not be provided to third parties without
464 the written authorization of the minor, except as otherwise required or permitted
465 by law.

466

467 **B. Minors’ Rights**

468 If the minor could have consented to the care under the law, or in fact did
469 consent to the treatment, the minor enjoys the right to access their own record,
470 authorize disclosure to third parties, and amend/addend their record as permitted
471 under HIPAA and state law. Other rights to control or access their information,
472 limit disclosures, and be notified of breaches are described in the HIPAA Notice
473 of Privacy Practices that will be provided to the minor and will be explained as
474 part of the consent process.

475

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Attachment(s):



Monterey County Behavioral Health Minor Consent

CLIENT: _____

DOB: _____

481

482

MINOR CONSENT

483

I would like to receive services from Monterey County Behavioral Health (MCBH). I

484

know that I can change my mind about getting services here at any time. I can give my

485

own consent to these services because: (check any that apply)

486

I am a minor seeking "sensitive" services (*e.g., outpatient mental health services and/or substance abuse treatment*)

487

488

I am emancipated (*e.g., married, active U.S. military, or by court order*)

489

I am a self-sufficient minor (*15 years or older, living separate and apart from parent/legal guardian and managing my own finances*)

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492

MCBH HEALTHCARE TEAM

493

I have been told how services will be provided. I understand that:

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- The MCBH healthcare team may consist of specialists from different disciplines and different licensure.

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- Some of the healthcare team members may be trainees working toward graduate degrees in psychology, social work, marriage and family therapy, nursing and/or psychiatry.

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PRIVACY

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I have been told about how MCBH will protect my privacy and keep my health

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information private. I have been offered a copy of the MCBH Notice of Privacy Practices,

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which has information about how my private health information may be used and

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disclosed under the law. I understand that in certain situations information must be

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disclosed, for example if there is a reasonable suspicion of child abuse, or if there is a

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threat to my physical safety or to the safety of others. I also understand that if I am

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receiving services pursuant to minor consent for "sensitive services" that my provider

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must involve my parent/legal guardian, unless doing so would be inappropriate.

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SHARING INFORMATION WITH OTHERS

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I understand that MCBH healthcare team members:

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- May share my private healthcare information with each other to coordinate or evaluate my care.

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- May share my private healthcare information with healthcare professionals outside MCBH in order to better provide services to me. For example, team members may

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suggest that I get services from someone else in the community.

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- May share information within the program its own operations, for example to improve the quality and impact of the services they provide.

MY RIGHTS

I have been told that:

- I have a right to request a copy of my record.
- I have a right to ask that private information about me be shared with third parties including my parent/legal guardian or others.

Client Signature:

Date: _____

Staff Signature: _____

Date: _____

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