



STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

GRETCHEN WHITMER
GOVERNOR

ROBERT GORDON
DIRECTOR

March 20, 2020

TO: Executive Directors of Prepaid Inpatient Health Plans (PIHPs) and
Community Mental Health Services Programs (CMHSPs)

FROM: Raymie Postma, Director *RP*
Office of Recipient Rights
Allen Jansen, Deputy Director *AJ*
Behavioral Health and Developmental Disabilities Administration

SUBJECT: Accept Verbal Consent for Services

Question:

Can CMHSPs accept verbal consent for services from a parent, legal representative, or guardian during the COVID-19 emergency?

Answer:

Yes. Per Center for Disease Control and Prevention (CDC) and state recommendations for social distancing to slow the spread of COVID-19, the state is allowing greater flexibility related to telemedicine audio/ visual requirements to the protect the health and welfare of beneficiaries and providers while maintaining access to vital services during the COVID-19 pandemic.

As such, the Office of Civil Rights has indicated they will not pursue violations of HIPAA during this emergency. Additionally, the Office of Recipient Rights (ORR) and Behavioral Health and Developmental Disabilities Administration (BHDDA) will temporarily suspend enforcement of the written consent requirements to ensure that services are not being withheld or limited due to the inability to get a written consent. CMHSP and their contract providers should make use of alternatives to face to face encounters that can be used to obtain written consent, including but not limited to, fax, email or picture of signed document sent via text or email. All attempts to obtain written consent should be documented, along with the verbal consent, in the recipient's record.

Footnote

MCL 330.1100a Definitions; A to E.

(19) "Consent" means a written agreement executed by a recipient, a minor recipient's parent, a recipient's legal representative with authority to execute a consent, or a full or limited guardian authorized under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, with the authority to consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.