

Attachment C

Act 65 of 2020: Consent to Mental Health Treatment for Minors Frequently Asked Questions

For the purposes of this document, “minor” will refer to an individual between the ages of 14 years old and under 18 years old.

Questions marked with an asterisk are new and were not included in Bulletin OMHSAS-18-01, which is now obsolete and has been replaced by Bulletin OMHSAS-23-01.

Outpatient Treatment

- **Who can consent to outpatient mental health treatment?**

A minor can consent to outpatient mental health examinations and treatment for themselves without parental consent.

A parent or legal guardian can provide consent to outpatient mental health examinations and treatment without a minor’s consent.

- **Can the non-consenting person revoke the 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 legal guardian and, likewise, the parent or legal guardian cannot abrogate consent that a minor has provided.

- **Can a parent or guardian object to outpatient treatment for which a minor has provided consent?**

No. Neither Act 65 of 2020 (“Act 65”) nor the Mental Health Procedures Act (MHPA) provides guidance through which a parent or legal 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 65 nor the MHPA provides guidance through which a minor can object to voluntary outpatient treatment for which a parent or legal guardian has provided consent.

- ***Must a parent or legal guardian be informed when their minor has consented to outpatient treatment?**

No. Neither Act 65 nor the MHPA requires that a parent or legal guardian be informed that their minor has initiated outpatient treatment.

Inpatient (“IP”) Treatment

- **How is IP treatment defined?**

Act 65 defines IP treatment as “all mental health treatment that requires full-time or part-time residence in a facility that provides mental health treatment.”

- **Who can consent to IP mental health treatment?**

Act 65 provides that minors can consent to IP mental health treatment for themselves without parental or legal guardian 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 to IP treatment without the consent of the minor. IP treatment can be provided based on consent from a parent or legal guardian AND on the recommendation of a physician who has examined the minor. If consent is provided by a parent or a legal guardian, the involuntary treatment process should not be initiated under the MHPA.

- ***Must a parent or legal guardian be notified that their minor has consented to IP mental health treatment?**

Yes. When a minor consents to IP mental health treatment, the MHPA requires the director of the facility to notify the minor’s parent, legal guardian, or person standing in loco parentis, to inform them of their right to file an objection to IP treatment. (50 P.S. §7204)

- ***When can IP treatment begin?**

IP treatment can begin when consent for treatment has been provided by either the minor, the parent, or the legal guardian. Consent is required from only one individual for IP treatment to begin.

- **Can the non-consenting person revoke the consent of the other?**

No. 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 legal guardian object to IP treatment for which a minor has provided consent?**

Yes. Act 65 does not restrict or alter the right of a parent or legal guardian to object to inpatient treatment initiated by the minor. (35 P. S. § 10101.1(b) (3)). 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. (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 another person authorized by Act 65 or the MHPA provides consent to continued IP treatment.

- **Can a minor object to IP treatment for which a parent or guardian has provided consent and if so, what is the process?**

Yes. When a minor is admitted to IP treatment with the consent of a parent or legal guardian, the facility director must provide the minor an explanation of treatment and a statement of rights, including the right to object to treatment by filing a petition in court. (35 P. S. § 10101.1(b) (7)). If the minor wishes to object to treatment, the facility must provide a form for the minor to request a withdrawal from or modification of treatment. The minor remains in the facility during this process and should continue to receive treatment. The facility director must file the signed petition in the court of common pleas where the facility is located. Act 65 does not specify a time frame, but it should be filed promptly. Act 65 provides that the court must appoint an attorney to the minor and schedule a hearing to be held within 72 hours of filing the petition. The Office of Mental Health and Substance Abuse has created a sample petition form (Attachment B of OMHSAS-23-01 that can be used for this purpose).

- **Can a parent or guardian object to IP 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 IP 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 the release of medical records?**

Control over the release of medical records generally resides with the person who has provided consent to treatment. Under Act 65, when the minor has provided consent to treatment and understands the nature of the records and the purpose of releasing them, they control the 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 the 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.