



ISSUE DATE

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OMHSAS-23-01

SUBJECT:

**Act 65 of 2020: Consent to Mental Health
Treatment for Minors**

BY:

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Office of Mental Health and Substance Abuse Services**

SCOPE:

County Mental Health/Behavioral Health Programs
County Intellectual Disability and Autism Programs
County Human Services Administrators
Licensed Mental Health Facilities
Licensed Health Providers
Behavioral Health Managed Care Organizations
County Children and Youth Social Service Agencies
Private Children and Youth Social Services Agencies
County Human Service Programs
County Courts of Common Pleas

PURPOSE:

The Office of Mental Health and Substance Abuse Services (OMHSAS) is issuing this Bulletin to provide guidance for the implementation of Act 65 of 2020 (“Act 65”) (35 P. S. §§ 10101.1-10101.2).

Act 65 governs who can provide consent for voluntary mental health treatment of minors who are 14 years of age and less than 18 years of age (“minor”), in both inpatient and outpatient settings. Act 65 also addresses which individuals may grant consent to the release of a minor’s medical records.

BACKGROUND:

Act 10 of 1970 (“Act 10”) provided minors the ability to consent to medical, dental, and health services. Act 147 of 2004 (“Act 147”) amended Act 10 to include provisions regarding voluntary inpatient and outpatient mental health treatment for minors.

On September 21, 2020, Act 65 replaced Act 147 and further amended Act 10, by providing clarity on who can consent to voluntary inpatient and outpatient mental health treatment of minors and the release of their mental health records. Act 65 governs the mental

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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Email: RA-PWACT65of2020@pa.gov.

health treatment of minors in conjunction with the Mental Health Procedures Act (“MHPA”) (50 P. S. § § 7101—7503).

DISCUSSION:

OMHSAS is issuing this bulletin and the accompanying named attachments to provide clarity on Act 65 and ensure that voluntary mental health treatment is provided when the parameters of Act 65 are met. The intent of Act 65 is to enable behavioral health treatment to begin when consent is received from either the minor, parent, or legal guardian.

Outpatient Treatment

Outpatient treatment refers to nonresidential mental health treatment. This bulletin describes what occurs when a minor, a parent, or a legal guardian provides consent to outpatient treatment.

When a minor provides consent to outpatient treatment:

A minor can provide consent to outpatient treatment, without the consent of a parent or legal guardian. When a minor consents to outpatient treatment, a parent or legal guardian cannot be notified of the initiation of treatment unless the minor consents to notification of the parent or legal guardian. In addition, neither Act 65 nor the MHPA address if a parent or legal guardian can object to voluntary outpatient treatment for which a minor has provided consent.

Outpatient treatment can begin with the minor’s consent. If a minor revokes their consent to outpatient treatment, the revocation is effective unless their parent or legal guardian provides consent to continue outpatient treatment.

When a parent or legal guardian provides consent to outpatient treatment:

A parent or legal guardian can provide consent to outpatient treatment, without the consent of a minor. A recommendation from a physician is not required for outpatient treatment. In addition, neither Act 65 nor the MHPA address if a minor can object to voluntary outpatient treatment for which a parent or legal guardian has provided consent.

Outpatient treatment can begin with a parent’s or legal guardian’s consent. If a parent or legal guardian revokes their consent to outpatient treatment, the revocation is effective unless the minor provides consent to continue outpatient treatment.

Inpatient Treatment

Section 7103.1 of the MHPA defines Inpatient (“IP”) treatment as mental health treatment that requires full or part-time residence in a facility. This bulletin describes what occurs when either the minor, parent or legal guardian objects to IP treatment.

When a minor provides consent to IP treatment:

In instances when a minor is providing consent to their own IP treatment, the consent must be consistent with the MHPA. This means the minor's consent must be in writing and obtained only after they have received an explanation of the treatment and their rights and have demonstrated that they substantially understand the nature of the treatment. Further, 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 the IP treatment. (50 P.S. §§ 7201, 7203, 7204).

If the parent or legal guardian objects to the IP treatment, they can file a petition with the court of common pleas to withdrawal from or request a modification to the treatment being provided. Act 65 does not provide a timeline or additional information on the petition process.

IP treatment can begin with the minor's consent and continue unless IP treatment is no longer necessary or a court orders treatment to be stopped.

When a parent or legal guardian provides consent to IP treatment:

A parent or legal guardian of a minor can 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.

When a parent or legal guardian grants consent, a minor may object to treatment. IP providers should attempt to ascertain why the minor is objecting to treatment and take reasonable steps to assist the minor in understanding how IP treatment will benefit them, including how the minor's objections may be addressed.

If the minor expressly objects to treatment, the facility director or their designee must provide the minor with a form to withdrawal from or modify treatment. The form must be submitted to the court by the facility director or their designee. Based on feedback provided to OMHSAS, these forms are not always readily available and the lack of such a form may delay or otherwise hinder a minor from receiving IP treatment. To address these concerns, OMHSAS has developed a petition template (see Attachment B) that may be used by minors to either withdrawal from or modify IP treatment.

After the petition is filed with the court by the facility director or their designee, the court must assign the minor an attorney and schedule a hearing within 72 hours.

IP treatment can begin upon the consent of a parent or legal guardian, with the recommendation of a physician who has examined the minor. IP treatment can continue unless IP treatment is no longer necessary or a court orders treatment to be stopped.

Additional Information

An overview of Act 65 PowerPoint (see Attachment A) is included to provide a further synopsis of the Act.

A frequently asked questions document (see Attachment C) is provided as a reference guide to address common questions relating to the implementation and interpretation of Act 65.

OBSOLETE BULLETIN:

The issuance of this bulletin renders the OMHSAS-18-01, *Consent to Mental Health Treatment for Minor Children* obsolete.

ATTACHMENTS:

Attachment A: Overview of Act 65 of 2020

Attachment B: Sample Petition for Objection to Voluntary Inpatient Mental Health Treatment by a Minor.

Attachment C: Act 65 of 2020: Consent to Treatment Frequently Asked Questions

Attachment A

Overview of Act 65 of 2020

What is Act 65 of 2020?



- Act 65 replaces Act 147 of 2004.
- Act 65 determines who can provide consent for voluntary mental health treatment of minors, in both inpatient and outpatient settings.
- Act 65 also determines who can consent to the release of a minor's medical and mental health records.

Who Can Consent ?



- Minors who are **14 years or older** can consent to voluntary **inpatient or outpatient** mental health treatment for themselves, without consent from parent or legal guardian.
 - Upon the acceptance of an **application for examination and treatment** by a minor, the director of the facility or designee **must promptly notify the minor's parents, guardian, or person standing in loco parentis**, and shall **inform them of the right to be heard upon the filing of an objection** (See the Mental Health Procedures Act, 50 P. S. § 7204)
- A parent or legal guardian of a minor **under the age of 18** can consent to **inpatient or outpatient** mental health treatment of their minor, without the minor's consent.
 - A parent or legal guardian **can consent** to voluntary **outpatient** mental health treatment of their minor **without the recommendation of a physician**.
 - A parent or legal guardian **can consent** to voluntary **inpatient** mental health treatment **with the recommendation of a physician, licensed clinical psychologist or other mental health professional who has examined the minor**.

Revoking Consent



- **A minor or parent/legal guardian** can revoke their consent to inpatient or outpatient treatment at anytime
- If a minor **provides consent, then later revokes it**, the parent or legal guardian **can provide consent for the treatment to continue, and vice versa.**
- However, if no additional consent is provided, **the facility must discharge the minor unless the facility director or designee files a petition for involuntary commitment.**

- **A parent or legal guardian cannot abrogate** consent given by a minor.
- **A minor cannot abrogate** consent given by a parent or legal guardian.

Who Can Object?



- A **minor or parent/ legal guardian can object** to voluntary **inpatient treatment**.
- A **nonconsenting parent or legal guardian can object** to the consent given by another parent or legal guardian for inpatient mental health treatment, as long as the nonconsenting parent or legal guardian **has legal custody rights** of the minor.
- Act 65 **is silent** on whether a minor or parent/legal guardian can object to voluntary **outpatient treatment** to which either has consented.

How Can A Minor Object?



- At the time of admission to an inpatient facility, the facility director or designee must explain to the minor the nature of the mental health treatment he or she will receive and the right to object to the treatment.
- A minor can object to inpatient treatment by requesting for **modification of or withdrawal from** inpatient mental health treatment.
- The **director of the facility or their designee shall provide a form** for the minor to request for the modification of or withdrawal from treatment.
- The **director of the facility or their designee shall file** the petition for modification or withdrawal with the court.
- The minor must be **assigned an attorney** and a **hearing must be held within 72 hours** of filing the petition.

- For inpatient treatment to continue against a minor's wishes, the court must find the following:
 - The minor has a **diagnosed mental disorder**
 - The disorder is **treatable**
 - The disorder **can be treated in the particular facility** where the treatment is taking place
 - The proposed inpatient treatment setting represents the **least restrictive alternative** that is medically appropriate
- The initial court order can be for up to **20 days** of inpatient mental health treatment. Subsequent orders can be for **60 day periods** until the minor is determined to no longer need inpatient mental health treatment.

How Can a Parent/ Legal Guardian Object?



pennsylvania
DEPARTMENT OF HUMAN SERVICES

- A parent or legal guardian can object by **filing a petition with the court of common pleas** in the **county where the child resides** to object to the voluntary **inpatient** mental health treatment for a minor.
- A hearing must be held promptly after a petition is filed.

- Parents or legal guardians **have the right to be provided with information necessary to inform their consent for the minor's mental health treatment.**
- When a parent or legal guardian has consented to the mental health treatment of a minor, **the parent or legal guardian can also consent to the release of the minor's :**
 - **Medical records** to the minor's current mental health provider
 - **Prior mental health records** to the minor's current mental health treatment provider, if the information is **deemed pertinent by the current mental health provider.**
 - **Mental health records** to the primary care provider, if the current mental health treatment provider determines that the release **will not be detrimental to the minor**
- Release of records **with the consent of a parent or legal guardian** are **limited to direct release** from one mental health treatment provider to another or to a primary care provider.



- In all other situations, **minors control** the release of their mental health treatment records.



Questions regarding Act 65 can be directed to:
ra-pwAct65of2020@pa.gov

Attachment B

Act 65 of 2020: Sample Petition for Objection to Voluntary Inpatient Mental Health Treatment by a Minor

Authority

Act 65 of 2020 (“Act 65”) (35 P. S. § § 10101.1—10101.2) governs who can provide consent for voluntary mental health treatment of minors who are 14 years of age and less than 18 years of age (“minor”), in both inpatient and outpatient settings.

Applicability

Section 1.1 (b)(1) of Act 65 states that “a minor’s parent or legal guardian may consent to voluntary inpatient treatment pursuant to Article II of the act of July 9, 1976 (P.L. 817, No 143) known as the “Mental Health Procedures Act,” on behalf of a minor less than eighteen years of age on the recommendation of a physician who has examined the minor. The minor’s consent shall not be necessary.” (35 P. S. § 10101.1 (b) (2))

Section 1.1(b)(8) of Act 65 states that “any minor fourteen years of age or older and under eighteen years of age who has been confined for inpatient treatment on the consent of a parent or legal guardian and who objects to continued inpatient treatment may file a petition in the court of common pleas requesting a withdrawal from or modification of treatment.” Further, Section 1.1 (7) of Act 65 states that, “when a petition is filed on behalf of a minor fourteen years of age or older and under eighteen years of age who has been confined for inpatient treatment on the consent of a parent or legal guardian and who objects to continued inpatient treatment by requesting a withdrawal from or modification of treatment, the court shall promptly appoint an attorney for the minor and schedule a hearing to be held within seventy-two hours following the filing of the petition...” For IP treatment to continue, the court must find:

- “(i) that the minor has a diagnosed mental disorder;
- (ii) that the disorder is treatable;
- (iii) that the disorder can be treated in the particular facility where the treatment is taking place; and
- (iv) that the proposed inpatient treatment setting represents the least restrictive alternative that is medically appropriate.” (35 P. S. § 10101.1 (b) (8))

Instructions to Complete the Petition for Objection to Voluntary Inpatient Mental Health Treatment by a Minor

1. Part 1 is to be completed by the facility director or their designee. Supporting documentation which verifies the medical necessity of inpatient treatment may be attached, including documentation from the certifying physician, to assist in the petition review.
2. Part 2 is to be completed by the minor filing the objection to voluntary inpatient mental health treatment. A designee may assist the minor in completing the petition when requested by the minor. The role of the designee is to assist the minor in transcribing information but not to provide their own opinion or language.
3. Part 3 is to be completed by the court.
4. The minor shall be informed of the outcome of the petition.

Name of Minor:	Last:	First:	Middle Initial:
Date of Birth:	Admission Date:	Facility Name:	
Date minor objected to treatment:	Time minor objected to treatment:	Admission Number:	

PART I
Results of Examination and Determination of Need for Inpatient Treatment
(To be completed by the facility director or their designee)

_____ has been admitted to _____
Minor's name *Facility name*
for voluntary Inpatient (IP) mental health treatment on _____.

_____ has provided consent to this treatment.

The minor is requesting a *Minor's parent or legal guardian name* withdrawal from or modification of this voluntary IP treatment.

List what action the facility has taken to assist the above-named minor in understanding what IP treatment will be provided and how it will benefit them: *(Supporting documentation may be attached)*

Certifying Physician Information

Last Name: _____ First Name: _____

Medical License Number: _____

Date of certification: _____

Time of certification: _____

Location of certification: _____

Minor's mental health diagnosis(es) at certification:

Designated program and location for inpatient treatment:

Is the recommended inpatient treatment the least restrictive setting that is medically appropriate?

Medical reasons the minor needs, and will benefit from, inpatient treatment: *(Supporting documentation may be attached)*

If treatment has already begun, please provide a brief description of the treatment provided: *(Supporting documentation may be attached)*

Signature of facility director or designee: _____

Date: _____

Part II

Minor's Petition for Order of the Court

(To be completed by the minor or their designee)

Has it been explained to you why a doctor believes you need inpatient treatment?

Yes

No

Do you believe you could benefit from inpatient treatment?

Yes

No

What are you requesting from the court?

Withdrawal from inpatient treatment

Modification of inpatient treatment

Why are you requesting a withdrawal from or a modification of your inpatient treatment?

Signature of minor: _____

Date _____

PART III
Order for Voluntary Mental Health Treatment
(To be completed by the court)

In the court of _____ of _____ County
_____ term, _____

In re: _____

Docket No. _____

On this day _____ of _____, _____ after a hearing and consideration of (Details of findings from a minor, physician, Inpatient treatment provider, and parent/legal guardian. Please include reports, testimony and any other applicable information):

The court has determined:

- Minor shall be **discharged from Inpatient Treatment** because the court finds:
 - The minor does not have a diagnosed mental health disorder.
 - The disorder is not treatable.
 - The disorder cannot be treated in the facility where the treatment is currently taking place.
 - The proposed inpatient treatment setting does not represent the least restrictive alternative that is medically appropriate.

Other reason(s):

- Minor shall **remain at inpatient treatment** for _____ days
(initial treatment period shall not exceed 20 days, and subsequent treatment period(s) shall not exceed 60 days).

Date: _____

Signature of Judge: _____

Print Name of Judge: _____

The minor was represented by:

Minor's attorney address: _____

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.