



**TO:** New York State (NYS) Office of Mental Health Licensed Outpatient & Inpatient Providers

**FROM:** NYS Office of Mental Health (OMH)

**RE:** Minors' Rights to Mental Health Treatment under Mental Hygiene Law

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This memo addresses the rights of minors who are receiving outpatient mental health treatment by a mental health practitioner or those who are receiving inpatient psychiatric care. A minor is defined as a person under the age of 18. In circumstances, as outlined below, in which a minor can consent for treatment, all related documents and forms required for consent can be signed by the minor.

Under Mental Hygiene Law (MHL) § 33.21, mental health services are those “provided in an outpatient program licensed or operated pursuant to the regulations of the commissioner of mental health.” As such, this memo does not address providers that are not licensed or operated by OMH.

MHL § 33.21 defines a mental health practitioner as “a physician, a licensed psychologist, or persons providing services under the supervision of a physician in a facility operated or licensed by the office of mental health.” Mental health practitioners who are under the supervision of a physician would include such professionals as, social workers, mental health counselors, creative arts therapists, marriage and family therapists and psychoanalysts, working within scope as defined by the New York State Education Department’s Office of Professions.

Finally, a minor does not include the following youth groups. If a person younger than 18 is in one of the following groups they can consent to treatment without parental consent. (MHL § 33.21(a)(1)):

- A youth who is the parent of a child
- An emancipated youth
- A married youth
- A youth who is on voluntary status on their own application under MHL § 9.13

#### **Minors’ rights regarding mental health outpatient treatment (MHL § 33.21)**

A minor can receive outpatient mental health services, including an evaluation at a Comprehensive Psychiatric Emergency Program, without parental consent at an outpatient program that is licensed or operated pursuant to the regulations of the commissioner of mental health.

This section only authorizes the minor being able to receive outpatient services, excluding the prescribing and management of psychotropic medications, without a parent’s consent. In any outpatient circumstance in which psychotropic medication is recommended, the consent of the minor’s legal guardian is required.

Under MHL § 33.21 (c), a mental health practitioner practicing in a program that is licensed or operated by OMH may provide outpatient mental health services to a minor without parental consent if:

- 1) The minor knowingly and voluntarily seeks such services, **and**
- 2) The services are clinically indicated and necessary to the minor's well-being, **and**
  - (i) a parent or guardian is not reasonably available. A parent or guardian is considered reasonably available if they can be contacted with diligent efforts. **or**
  - (ii) requiring parental or guardian consent or involvement would have a detrimental effect on the course of outpatient treatment, **or**
  - (iii) a parent or guardian has refused to give such consent and a physician determines that treatment is necessary and in the best interests of the minor. (In cases where consent is refused, a physician must make the determination.)

A minor may meet with a mental health practitioner without prior parental consent to determine whether the minor meets the above guidelines. See MHL § 33.21(d). If the conditions outlined above are not met, New York law requires the consent of a parent or guardian for outpatient treatment.

#### **Minors' rights regarding inpatient psychiatric care (MHL § 33.21)**

A minor 16 or over can seek admission to a hospital, Comprehensive Psychiatric Emergency Program (CPEP) Extended Observation Beds or a Residential Treatment Facility (RTF) for inpatient mental health care without parental consent if the minor is voluntarily seeking treatment and the director of the facility is in agreement. Minors 15 and under must have their parent or legal guardian's consent to do so.

Under MHL § 33.21(e), a minor 16 or over who is admitted to a hospital under minor voluntary status, can consent to psychotropic medication without the consent of a parent or guardian or a court order if the following are met:

- (i) A parent or guardian is not reasonably available (a parent or guardian is considered reasonably available if they can be contacted with diligent efforts), provided the treating physician determines that the minor had capacity **and** the medications are in the minor's best interest; **or**
- (ii) Requiring consent of a parent or guardian would have a detrimental effect on the minor, provided that the treating physician and a second physician who specializes in psychiatry, and is not an employee of the hospital, determine that (A) Such detrimental effect would occur; and (B) the minor has capacity to consent; and (C) such medications are in the minor's best interest. **or**
- (iii) The parent or guardian has refused to give such consent, provided the treating physician and a second physician who specializes in psychiatry and is not an employee of the hospital determine that (A) the minor has capacity to consent; and (B) such medications are in the minor's best interests. Notice of the decision to administer psychotropic medication pursuant to this subparagraph shall be provided to the parent or guardian.

The reasons for an exception shall be fully documented in the minor's clinical chart.