



Medicaid  
Redesign Team

Department  
of Health

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Mental Health

Office of Alcoholism and  
Substance Abuse Services

Office of Children  
and Family Services



# Health Home Serving Children: Consent Policy and Procedures

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# Introductions

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# Agenda

- Overview of Federal and State Laws and Regulations governing the provision of, and rights of minors, to consent to certain Health Care services
- Review draft consent forms
  - FAQ, Forms A and B
  - Form C
  - Withdrawal forms
- Next steps



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# Background

- Program and Legal Staff from State Agencies (DOH, OMH, OCFS, OASAS, NYSED) have been working to develop draft forms and review consent procedures for various children's populations
- The State Team consulted with a group (3 meetings) of Health Homes and others that requested to be involved in development of draft forms
- Draft forms and FAQ are posted to the DOH Website ([http://www.health.ny.gov/health\\_care/medicaid/program/medicaid\\_health\\_homes/hh\\_children\\_forms.htm](http://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/hh_children_forms.htm)), **comments welcome**



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# Background (continued)

- As will be discussed in more detail, the drafts will require, with limited exceptions, parental, guardian, or legally authorized representative consent for enrollment and sharing of health information for minors.
  - For this slide presentation, a “minor” is defined as an individual under age 18
- For minors enrolling in a Health Home, we have drafted an enrollment form and separate information sharing forms.
- Individuals aged 18 years and older will use the current *Health Home Patient Information Sharing Consent* form (DOH-5055).
  - There are other minors who will also use DOH-5055 – will be discussed
- Please note: Policy and standards applicable to members enrolled in Designated Children Health Homes apply to all members under age 21, regardless of whether they have the ability to consent for Health Home care management on their own behalf.



# Medicaid Analytics Performance Portal (MAPP) Will Help Manage Health Home Consent for Children

- **Consent to Refer:** MAPP will require a user to indicate if consent to refer was received. If consent is not received, the user will be prevented from submitting a referral in MAPP.
- **Consent to Enroll:** MAPP will require a user to indicate if consent to enroll was received. If consent is not received, the user will be prevented from recording enrollment services in MAPP.
- **Consent to Share Information:** MAPP will allow a user to indicate if a minor has declined consent to share information for protected services with a parent/guardian. If consent is declined, the system will warn users. The warning message will advise the user that the minor has declined consent to share information for protected services and procedures.



# Laws and Regulations Regarding Consent and Confidentiality for Health Services to Minors

- HIPAA
- The Affordable Care Act
- The New York State Department of Health
  - Public Health Law (PHL) 2504
  - Article 27-f
  - Social Services Law (SSL) 365-l
- The Office of Mental Health
  - Mental Hygiene Law (MHL) 33.21, 33.16, 9.13
- The Office of Alcoholism and Substance Abuse Services
  - MHL 22.11
  - 42 Code of Federal Regulations (CFR) 2.14
- The Office of Children and Family Services
  - SSL 383-b and 398(6); FCA 355.4
  - 18 New York Codes, Rules and Regulations 441.22



# Under Current Laws and Regulations, Parental, Guardian or Legally Authorized Representative Consent, with only Limited Exceptions, is Required for Minors to be Enrolled in Health Home

- Pursuant to § 2504 of the Public Health Law, Health Home care management is a health service, and, as such, requires the consent of a parent, guardian or legally authorized representative\* to enroll minors in a Health Home and authorize health information sharing among the minors' providers.

\*Legally authorized representative is defined as: a person or agency authorized by state, tribal, military or other applicable law, court order or consent to act on behalf of a person

- in making health care decisions (for the purpose of enrollment in a health home), or
- for the release of medical information (for the purpose of sharing health information).

For certain categories of foster care children (e.g., abused/neglected children), a legally authorized representative for enrollment is a commissioner/or designee of a local department of social services.



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# Exceptions to when a Parent, Guardian, or Legally Authorized Representative is Required for Minors to be Enrolled in Health Home and have their Information Shared

- A minor who is married, pregnant, or a parent can consent to enrollment into a Health Home and provide authorization to have their health information shared (the current consent form DOH 5055 would be used in these circumstances)



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# Circumstances when Minors can Consent to Sharing of Health Information

- Minors may consent to receive certain Health Care services (***other than Health Home services***), including:
  - Family Planning
  - Emergency Contraception
  - Abortion
  - Sexually Transmitted Infection Testing and Treatment
  - HIV Testing
  - Prenatal Care, Labor/Delivery
  - Chemical Dependency
  - Drug and Alcohol Treatment
  - Sexual Assault Services
  - Mental Health Services: For minors over the age of twelve, their clinician may consult with them prior to releasing information
- A minor who consented to receive these services or treatment can also consent to the sharing of information regarding those services or treatment. This is addressed in the consent forms.



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# Minors in Foster Care

- For minors in foster care, new consent forms will need to be completed as a minor transitions out of foster care. For example:
  - A minor was enrolled in a Health Home while in Foster Care by his/her legally authorized representative (e.g. commissioner of a local department of social services). The minor then moves back under the care of his/her parents. In order to continue Health Home services, the minor's parent will need to complete new enrollment and health information sharing forms.
  - This also works in reverse. If a minor is enrolled in a Health Home while under the care of a parent and then moves into Foster Care, the appropriate legally authorized representative will need to sign new Health Home forms.



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# Laws and Regulations Regarding Consent and Confidentiality of the Educational Records of Minors

- Family Education Rights and Privacy Act of 1974 (FERPA) – 34 CFR Part 99
- NYS Personal Privacy Protection Law (PPPL) – Public Officer’s Law §§91-99
- Individuals with Disabilities Education Act (IDEA) – 20 USC §1417, et seq. and its implementing regulations at 34 CFR §300.610-300.627



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# Development of Draft Consent Forms

- Based on this information five Forms have been drafted:
  - One Form to enroll the child in Health Homes (Form A)
  - One Form to allow for health Information to be shared among Health Home Partners (Form B)
  - One Form to allow for educational records to be shared among Health Home Partners (Form C)
  - One Form to withdraw Health Home Enrollment and Information Sharing
  - One Form to withdraw release of educational records
- The Department has also made available Frequently Asked Questions (FAQ)



# Review of Draft Forms

- We will now walk through each of the forms



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# Next Steps

- All forms are posted on the DOH website ([http://www.health.ny.gov/health\\_care/medicaid/program/medicaid\\_health\\_homes/hh\\_children\\_forms.htm](http://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/hh_children_forms.htm))
- We are accepting comments on all forms. Please email comments to [hhsc@health.ny.gov](mailto:hhsc@health.ny.gov)
- Due date for comments is **June 1, 2015**



# Questions/Comments?



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