§ 33.21 Consent for mental health treatment of minors.

(a) For the purposes of this section:

(1) "minor" shall mean a person under eighteen years of age, but shall not include a person who is the parent of a child, emancipated, has married or is on voluntary status on their own application pursuant to section 9.13 of this chapter, or is a homeless youth, as defined in section five hundred thirty-two-a of the executive law, or receives services at an approved runaway and homeless youth crisis services program or a transitional independent living support program as defined in section five hundred thirty-two-a of the executive law;

(2) "mental health practitioner" shall mean 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;

(3) "outpatient mental health services" shall mean those services provided in an outpatient program licensed or operated pursuant to the regulations of the commissioner of mental health;

(4) "reasonably available" shall mean a parent or guardian can be contacted with diligent efforts by a mental health practitioner; and

(5) "capacity" shall mean the minor's ability to understand and appreciate the nature and consequences of the proposed treatment, including the benefits and risks of, and alternatives to, such proposed treatment, and to reach an informed decision.

(b) In providing outpatient mental health services to a minor, or psychotropic medications to a minor residing in a hospital, the important role of the parents or guardians shall be recognized. As clinically appropriate, steps shall be taken to actively involve the parents or guardians, and the consent of such persons shall be required for such treatment in non-emergency situations, except as provided in subdivisions (c), (d) and (e) of this section or section two thousand five hundred four of the public health law.

(c) A mental health practitioner may provide outpatient mental health services, other than those treatments and procedures for which consent is specifically required by section 33.03 of this article, to a minor voluntarily seeking such services without parental or guardian consent if the mental health practitioner determines that:

(1) the minor is knowingly and voluntarily seeking such services; and

(2) provision of such services is clinically indicated and necessary to the minor's well-being; and

(3) (i) a parent or guardian is not reasonably available; 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.

The mental health practitioner shall fully document the reasons for his or her determinations. Such documentation shall be included in the minor's clinical record, along with a written statement signed by the minor indicating that he or she is voluntarily seeking services. As clinically appropriate, notice of a determination made pursuant to subparagraph (iii) of paragraph three of this subdivision shall be provided to the parent or guardian.

(d) A mental health practitioner may provide a minor voluntarily seeking outpatient services an initial interview without parental or guardian consent or involvement to determine whether the criteria of subdivision (c) of this section are present.

(e) (1) Subject to the regulations of the commissioner of mental health governing the patient's right to object to treatment, subdivision (b) of this section and paragraph two of this subdivision, the consent of a parent or guardian or the authorization of a court shall be required for the non-emergency administration of psychotropic medications to a minor residing in a hospital.

(2) A minor sixteen years of age or older who consents may be administered psychotropic medications without the consent of a parent or guardian or the authorization of a court where:

(i) a parent or guardian is not reasonably available, provided the treating physician determines that (A) the minor has capacity; and (B) such medications are in the minor's best interests; or

(ii) requiring consent of a parent or guardian would have a detrimental effect on the minor, provided 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; (B) the minor has capacity; and (C) such medications are in the minor's best

interests; 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; and (B) such medications are in the minor's best interests. Notice of the decision to administer psychotropic medications pursuant to this subparagraph shall be provided to the parent or guardian.

(3) The reasons for an exception authorized pursuant to paragraph two of this subdivision shall be fully documented and such documentation shall be included in the minor's clinical record.