

## NEW YORK STATE OFFICE FOR THE AGING

2 Empire State Plaza, Albany, NY 12223-1251

Andrew M. Cuomo, Governor

An Equal Opportunity Employer

Greg Olsen, Acting Director

### TECHNICAL ASSISTANCE MEMORANDUM

Number: 19-TAM-02

Supersedes: N/A

Expiration Date: N/A

**DATE:** July 23, 2019

**TO:** Area Agencies on Aging Directors, PeerPlace Champions, NY Connects Local Administrative Agencies, NY Connects Coordinators, and Regional NY Connects ILC Grantees

**SUBJECT:** Obtaining Informed Consent from Minors

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### PURPOSE:

This Technical Assistance Memorandum (TAM) is being issued to provide guidance to NY Connects Partners on obtaining consent for the personal information of an unemancipated minor to be captured in the Client Data System and/or to make disclosures of such personal information.

NY Connects is a resource available to a broad population that is not limited to older adults, and which may include minor children. The expanded population served may lead to certain questions regarding the capturing and/or disclosure of personal information. These questions include:

1. *May* consent be accepted from a minor child for actions related to his or her personal information without the need to speak with a parent or guardian?
2. *Must* consent be accepted from a minor child without speaking to a parent or guardian?
3. *May* consent be accepted from a parent or guardian for actions related to a minor child's personal information without the need to speak with the minor child?

4. *Must* consent be accepted from a parent or guardian without speaking to the minor child?

This TAM discusses these questions and contains the New York State Office for the Aging's (NYSOFA) suggested approach. The approach is a recommendation only, and each NY Connects partner is free to adopt its own policy on obtaining informed consent by or on behalf of a minor for decisions regarding the minor's personal information in accordance with applicable federal and state law.

## **BACKGROUND:**

For purposes of decisions relating to personal information in NY Connects operations, NYSOFA is not aware of any applicable laws that would require that informed consent be accepted from a minor on his or her own behalf, or that would prohibit informed consent from being accepted from a minor on his or her own behalf. Similarly, NYSOFA is not aware of any applicable laws that would require or prohibit the acceptance of informed consent provided on behalf of a minor from the minor's parent or guardian.

In other contexts, following rules not applicable to the activities of NY Connects, the general rule is that if the minor can personally consent to services that he or she will receive, he or she controls the medical information and any related decisions. While NY Connects is not providing "services" in this sense, activities involve collecting personal information and capturing it in the Client Data System. NYSOFA recommends the following approach be taken:

For the limited purposes of entering information in the Client Data System and for making referrals with this information:

1. Within reason, a minor should be allowed to provide consent to capture and/or disclose his or her personal information, without the need to speak with a parent or guardian. A recommended age for accepting consent from a minor is 13-years or older, which is consistent with federal regulations governing the online collection of personal information (see Children's Online Privacy Protection Rule, 16 CFR Part 312) and with provisions of the New York State Public Health Law governing disclosures of patient information (see Public Health Law § 18(3)(c)).
2. Unless the minor child is legally emancipated or married, a parent should be allowed to provide this consent on behalf of a minor child to collect and/or disclose the minor child's personal information, without the need for speaking directly to the minor child. If the minor child is emancipated or married, his or her consent is necessary, and the minor should be treated as an adult for these purposes.

3. A non-parent (e.g., grandparent) seeking to provide consent on behalf of a minor child should be asked if they are the legal guardian. If they are the legal guardian, they should be allowed to provide consent on behalf of the minor child in the same manner as a parent. If not, consent must be obtained from the minor child or the parent or legal guardian of the minor child.
4. Once personal information is collected, the person who first provided consent for the information to be captured in the Client Data System should continue to control the information. This means that for any subsequent decisions regarding referrals or other disclosures, consent should be sought from the same individual whose consent was obtained to capture the information, whether this be the minor him or herself or a parent or guardian.

Again, this guidance is for the limited purpose of decisions relating to personal information. Certain decisions regarding services may still require consent of a parent or guardian, or of the minor him/herself, as the case may be.

Also, please remain aware that an individual must have capacity to provide valid informed consent. For the purposes discussed in this TAM, no person is deemed to lack capacity based solely on age. However, informed consent always requires the ability to understand what has been explained and what is being consented to. This ability to understand may be impacted by age.

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**PROGRAMS AFFECTED:**

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| <input type="checkbox"/> Title III-B  | <input type="checkbox"/> Title III-C-1 | <input type="checkbox"/> Title III-C-2 |
| <input type="checkbox"/> Title III-D  | <input type="checkbox"/> Title III-E   | <input type="checkbox"/> CSE           |
| <input type="checkbox"/> SNAP   | <input type="checkbox"/> Energy        |  |
| <input type="checkbox"/> EISEP  | <input type="checkbox"/> NSIP          | <input type="checkbox"/> Title V       |
| <input type="checkbox"/> HIICAP   | <input type="checkbox"/> LTCOP         |  |
| <input checked="" type="checkbox"/> NY Connects:<br>Choices for Long<br>Term Care | <input type="checkbox"/> Other:        |  |

**CONTACT PERSON:** Any questions or concerns should be directed to the AAA's assigned NY Connects Coordinator.