



DIVISION OF DEVELOPMENTAL DISABILITIES
Olympia, Washington

TITLE: INFORMED CONSENT POLICY 7.03

Authority: Title 42 CFR 483.10, 483.15, 483.420
Title 45 CFR 164.506
RCW 7.70.065, 11.88.010, 11.92, 70.122, 71.05.370, 71A.20.050

BACKGROUND

The Division of Developmental Disabilities (DDD) provides services to persons who may need assistance with understanding and expressing choices regarding proposed services. Facilities and interdisciplinary teams (IDTs) are required to develop appropriate consent forms for client treatment and all activities that require consent.

Note: "Informed consent" is different from "consent" which is defined under HIPAA as permission given by a client for DSHS and other agencies or individuals to share, disclose, or use client information to coordinate services for treatment, payment, and DSHS operations.

PURPOSE

This policy establishes guidelines for obtaining informed consent from clients, their family members, guardians or other legal surrogates for proposed treatments or activities. This includes, but is not limited to, honoring the wishes of clients or their legal surrogates stated in an Advance Directive.

SCOPE

This policy applies to all division staff who are required to get consent for habilitative services for persons living in the Residential Habilitation Centers (RHCs).

DEFINITIONS

Capacity to give informed consent means the cognitive ability to understand and appreciate the elements of informed consent and to make a reasoned decision whether or not to participate in a proposed treatment or activity. A person may have capacity in one situation but not another.

Custodian means the Secretary of DSHS as authorized under RCW 71A.20.050. The Secretary of DSHS has custody of all clients and has control of their individual medical, educational, and therapeutic treatment. For persons under 18 years of age, the Secretary and the serving school district superintendent share responsibility for that person's education. RHC Superintendents act as custodians for RHC residents.

Information means a person giving consent must have enough information to decide what a client needs (i.e., informed consent). The person providing information must convey it in a manner that another person can understand, including discussion, providing literature, videos, pictorials, or other presentations.

Informed Consent means agreement to proceed with a particular treatment or activity based upon an understanding of the following:

1. The nature and character of the proposed treatment or activity;
2. The material facts involved. Material facts are facts to which a reasonably prudent person would attach significance in deciding whether or not to participate in the proposed treatment or activity;
3. The anticipated results of the proposed treatment or activity;
4. The possible risks and benefits of the proposed treatment or activity; and
5. Alternative treatments or activities reasonably available, including the ability to decline the proposed treatment or activity.

Legal Surrogates includes anyone in the consent hierarchy.

POLICY

- A. The IDT shall obtain appropriate informed consent from individuals with capacity to give informed consent before starting any program or activity that presents a risk to his or her health or safety, where such risk is not considered to be insignificant.
- B. When an individual cannot give informed consent, the IDT shall seek such consent from one of the following classes of persons in the following order of priority:
 1. The person's legal guardian or parent if the person is less than eighteen (18) years of age;
 2. An individual to whom the person has given a durable power of attorney, including the authority to decide health care issues;

3. The person's spouse;
4. Children of the person who are eighteen (18) years of age or older;
5. The person's parents; and
6. Adult brothers and sisters of the person.

PROCEDURES

A. When guardians, family members or others listed in the informed consent hierarchy are unavailable, the superintendent in his or her custodial capacity may authorize the proposed treatment or activity if necessary to safeguard the health, safety, or well-being of the client.

B. Treatment and Activities Requiring Informed Consent

Treatments and activities requiring informed consent include, but are not limited to, the following:

1. Emergency or non-routine medical and dental procedures such as surgery, transfusions, and tooth extraction;
2. Elective or therapeutic surgery;
3. Admission to an RHC;
4. Release of confidential information except as permitted or required by law;
5. Restrictive or aversive behavior management programs;
6. Participation in research;
7. Medications prescribed for birth control;
8. Hormones used for reproductive health problems;
9. Use of neuroleptic or other medications for behavior control or mental disorders;
10. Restraints used as part of a comprehensive behavioral management program;

11. Diagnostic treatment such as body tissue samples, studies of internal body organs and tissues that involve the injection of a dye or other solutions, and specialized X-rays such as the MRI;
12. Any procedure requiring sedation and/or a general anesthetic;
13. Cosmetic procedures involving invasive techniques, such as piercing of ear lobes; and
14. Medications having potential side effects that could create significant health risks.

C. Procedures and Activities Not Requiring Informed Consent

Legal guardians or family members of a client will be informed by the facility of routine medical procedures, illness, or injury. The following procedures and activities do not require a client's formal consent:

1. The delivery of routine programs and services;
2. Emergency procedures necessary to address a significant threat to the individual's health when timely consent is not possible; and
3. Routine medical procedures such as, but not limited to, injections, blood draws, sutures for lacerations, insertion of a heparin lock, and administration of medications that do not have potential side effects that could create significant health risks.

D. Legal Requirements for Informed Consent

When considering whether an individual can give informed consent, the legal requirements including capacity and information must be considered, as described in the "Definitions" section of this policy.

E. Procedures/Activities Requiring Court Approval

The following procedures require review and approval by a court of law:

1. Sterilization or abortion (refer to DDD Policy 9.08, *Consent for Medical Treatment Affecting Reproductive Functions*);
2. Therapy or other procedures that induce convulsion;
3. Surgery solely for psychosurgery; and

4. Other psychiatric or mental health procedures that restrict physical freedom of movement.

SUPERSESION

DDD Policy 7.03
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Approved: /s/ Linda Rolfe
Director, Division of Developmental Disabilities

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