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, 71.05.217, 71A.20.050
WAC 246-100-205

PURPOSE

This policy establishes a protocol for obtaining informed consent before a Residential Habilitation Center (RHC) client undergoes a treatment or procedure that requires informed consent.

SCOPE

This policy applies to all Residential Habilitation Centers.

DEFINITIONS

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

Custodian means the Secretary of DSHS or designee under RCW 71A.20.050.

Legal surrogate means anyone in the consent hierarchy as defined in Policy Section C.

Restrictive procedure means a procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which they do not want to do, or removes something the client owns or has earned. Examples of restrictive procedures include bedrails, electronic monitoring devices, and dietary restrictions.

Routine consent means informed consent for planned or anticipated care for the client that does not involve an emergent or life-threatening situation and a delay for consent does not adversely affect the client.

Urgent consent means informed consent for a change in the client's care that cannot wait hours or days without adversely affecting the client.

POLICY

A. Before providing a treatment or procedure that poses a significant safety risk to a client, RHC staff must obtain informed consent from the client if the client has the capacity to give informed consent.

B. "Informed consent" means agreement to proceed with a particular treatment or service based on an understanding of:

1. The nature and character of the proposed treatment;

2. The material facts involved, which are facts to which a reasonably prudent person would attach significance in deciding whether or not to participate in the proposed treatment;

3. The anticipated results of the proposed treatment;

4. The possible risks and benefits of the proposed treatment; and

5. Alternative treatments reasonably available, including the ability to decline the proposed treatment.

C. If a client cannot give informed consent and does not have a guardian, the interdisciplinary team must seek such consent from one of the following classes of people in the following order of priority, known as "the consent hierarchy":

1. The client's parent if the client is under 18;

2. A person who has a durable power of attorney that includes the authority to make healthcare decisions;

3. The client's spouse or state registered domestic partner;

4. The client's adult child;

5. The client's parent; or

6. The client's adult sibling.

D. No person may provide informed consent to healthcare:

1. If a person of higher priority under RCW 7.70.065(1)(b) has refused to give such authorization; or

2. If there are two or more people in the same class and the decision is not unanimous among all available members of that class.

E. An informed consent is valid until replaced or rescinded by the authorizing party, except when a specific expiration date is listed on the consent form.

PROCEDURES

A. When guardians, family members, or others listed in the informed consent hierarchy are unavailable, the RHC Superintendent in their custodial capacity may authorize the proposed treatment or procedure for a client if necessary to safeguard the health, safety, or well-being of the client or others.

B. The RHC must obtain informed consent for:

1. An emergency or non-routine medical or dental procedure such as surgery, transfusion, or tooth extraction;

2. Elective or therapeutic surgery;

3. Any procedure requiring sedation, a general anesthetic, or both;

4. Psychoactive medications or medications considered restrictive, including medications prescribed for:

   a. Birth control;

   b. Diminishing sexual desire or function;

   c. Reproductive health issues; and

   d. Mental disorders.

5. Diagnostic treatment, such as body tissue samples, studies of internal body organs and tissues that involve the injection of a dye or other solution, and specialized X-rays such as the MRI;

6. Invasive cosmetic procedures, such as piercings or tattoos;

7. A restrictive procedure or restraint used as part of a positive behavior support plan to address challenging behaviors (See DDA 5.11, *Restraints*);

8. Blood testing a source individual following blood-borne pathogen exposure;

9. Participation in research;

10. Release of confidential information except as permitted or required by law; and

11. Admission to a community ICF/IID or RHC (See DDA 3.04, *Intermediate Care Facility for Individuals with Intellectual Disabilities and State-Operated Nursing Facility Admissions Protocol*).

C. The following treatments and procedures are approved on admission and annually, but do not require informed consent as described in this policy:

1. The delivery of routine programs and services;

2. Emergency procedures necessary to address a significant threat to the client's health when timely consent is not possible;

3. Routine medical procedures such as injections, blood draws, diagnostic tests, sutures for minor lacerations, insertion of a heparin lock, and administration of medications and vaccines recommended by the Centers for Disease Control that are not restricted elsewhere in this or other current DDA Policies;

4. Reporting of HIV, Hepatitis, potentially infectious diseases, and other notifiable conditions under chapter 246-101 WAC.

D. The person providing information for informed consent must convey it in a manner the client understands; for example, through discussion, or by providing written materials, videos, pictures, or other presentations.

1. The RHC must obtain consent in writing for urgent and routine consents.

2. If the RHC needs to obtain urgent consent, verbal approval from a person in the consent hierarchy is acceptable but must be obtained with a noted witness and followed by written consent within 30 days. The medical prescriber must document justification for the urgent consent.

3. If a person from the consent hierarchy does not respond to three documented phone attempts for urgent consent, or in writing within three weeks, the Superintendent may provide consent under RCW 71A.20.050.

E. The following treatment and procedures require a court order:

1. Sterilization or abortion (refer to DDA 9.08, Consent for Medical Treatment Affecting Reproductive Functions);

2. Electro-convulsive therapy or other procedure that induces convulsions; and

3. Psychosurgery, such as a frontal lobotomy.

F. If a client requires a treatment or procedure provided by an entity outside of the RHC, the outside entity must obtain consent.

1. Emergency care provided by an outside entity will be provided in full unless the client has a POLST or palliative care plan under DDA 17.01, *Supporting End-of-Life Decisions in Residential Habilitation Centers*.

2. The client and the client's family or guardian must participate in consent discussions, consultations, and medical decision making for procedures provided by an outside entity.

EXCEPTION

Any exception to this policy must have the prior written approval of the Deputy Assistant Secretary.

SUPERSESSION

DDA Policy 7.03
Issued January 1, 2009

Approved: /s/ Deborah Roberts Date: October 15, 2018
Interim Deputy Assistant Secretary
Developmental Disabilities Administration