



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 medical treatment and therapeutic services. Residential Habilitation Centers (RHCs) and interdisciplinary teams (IDTs) are required to develop appropriate consent forms for client treatment and services that require consent.

PURPOSE

This policy establishes guidelines for obtaining informed consent from clients, their family members, guardians or other legal surrogates for proposed treatments/procedures. 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 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 in RHCs and has control of their individual medical and therapeutic treatment. RHC Superintendents act as custodians for RHC residents.

Information means the level of information a person giving consent must have 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 service based upon an understanding of the following:

1. The nature and character of the proposed treatment;
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;
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.

Legal Surrogates includes anyone in the consent hierarchy as defined in Policy Section B.

POLICY

- A. RHC staff must obtain appropriate informed consent from clients with capacity to give informed consent prior to starting any treatment or therapy that presents a significant risk to the client's safety.
- B. When a client cannot give informed consent, the Interdisciplinary Team (IDT) must seek such consent from one of the following classes of persons in the following order of priority (i.e., "the consent hierarchy"):
 1. The client's guardian or parent if the client is less than eighteen (18) years of age;
 2. An individual to whom the client has given a durable power of attorney, including the authority to decide health care issues;
 3. The client's spouse;

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

Note: No person may provide informed consent to health care:

- (i) If a person of higher priority under RCW 7.70.065(1)(b) has refused to give such authorization; or
- (ii) If there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

PROCEDURES

A. When guardians, family members, or others listed in the informed consent hierarchy are unavailable, the RHC Superintendent in his or her 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.

B. Treatment/Procedures Requiring Informed Consent

Treatments and procedures 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. Any procedure requiring sedation and/or a general anesthetic;
4. Medications having potential side effects that could create significant health risks, including medications prescribed for:
 - a. Birth control;
 - b. The purpose of diminishing sexual desire and/or function;
 - c. Hormones used for reproductive health issues; and
 - d. Mental disorders and/or challenging behaviors.

5. 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;
6. Cosmetic procedures involving invasive techniques, such as piercing of ear lobes;
7. Admission to a community ICF/MR or another RHC (refer to DDD Policy 3.04, *ICF/MR Admissions Protocol*);
8. Participation in research;
9. Restrictive procedures used as part of a Positive Behavior Support Plan (PBSP) to address challenging behaviors (refer to DDD Policy 5.15, *Use of Restrictive Procedure*, for more information and requirements); and
10. Restraints used as part of a behavior support plan; and
11. Release of confidential information except as permitted or required by law.

C. Treatment/Procedures Not Requiring Informed Consent

The RHC will consult with the client's legal representative(s) or family members regarding routine medical procedures, illness, or injury. The following procedures 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 client's health when timely consent is not possible;
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 life-threatening side effects; and
4. Reporting of HIV, Hepatitis, potentially infectious diseases, and other notifiable conditions (Chapter 246-101 WAC).

D. Legal Requirements for Informed Consent

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

E. Treatment/Procedures 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 procedure which induces convulsion;
3. Surgery solely for psychosurgery; and
4. Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.370.

EXCEPTION

No exceptions to this policy may be granted without the prior written approval of the Division Director.

SUPERSESSSION

DDD Policy 7.03
Issued August 11, 2003

DDD Policy 7.03
Issued February 28, 2003

DDD Policy 7.03
Issued December 30, 1993

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

Date: January 1, 2009