

**DIVISION CIRCULAR #41
(N/A)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: December 12, 2003

DATE ISSUED: December 12, 2003

(Rescinds Division Circular 41, "Informed Consent", issued September 30, 1996)

- I. **TITLE:** Informed Consent
- II. **PURPOSE:** To establish policies to obtain informed consent.
- III. **SCOPE:** This circular applies to all components of the Division as well as providers under contract with or regulated by the Division.
- IV. **POLICIES:**
 - A. Instances where informed consent is required shall be specified in the appropriate Division Circular.
 - B. For minors (individuals under the age of 18), the legal guardians are the natural or adoptive parents unless another guardian has been legally appointed.
 - C. Informed consent shall be required for certain medical, surgical, psychiatric or dental treatments or behavioral interventions and restrictions of individual rights, including the right to privacy.
 - D. Informed consent shall not be coerced.
 - E. A competent individual or the legal guardian of an individual has the right to refuse medical, surgical, psychiatric or dental treatment or behavioral intervention.

- F. A Chief Executive Officer (CEO) and Regional Administrator has the authority to grant informed consent in certain limited instances as set forth in N.J.S.A. 30:4-7.2 and N.J.S.A. 30:4-7.3.
- G. Informed consent may only be obtained from a competent adult (an individual over the age of 18) or from the guardian of a minor or incapacitated adult.
- H. When the Bureau of Guardianship Services (BGS) has administrative guardianship of an individual, BGS is considered the legal guardian until the court makes other disposition.
- I. When there is the need for medical, surgical, psychiatric or dental treatment and no legal guardian exists, a special medical guardian may be appointed in accordance with Division Circular #32, "Authorization for Emergency Medical, Surgical, Psychiatric or Dental Treatment".
- J. When medical, surgical, psychiatric or dental treatment is to be performed by a facility outside the Division (e.g. hospital, surgical center), that facility shall be responsible to obtain informed consent.
- K. A guardian ad litem shall be required for a minor or adult adjudicated incapacitated if the use of electro shock, psychosurgery, sterilization or medical, behavioral or pharmacological research is proposed. (N.J.S.A. 30:6D-4).
- L. When the court has established limited guardianship for an individual, informed consent by the individual or guardian shall be in accordance with the judgment of guardianship.

V. GENERAL STANDARDS:

- A. Definitions - For the purpose of this circular, the following terms shall have the meaning defined herein:
 - 1. "Bureau of Guardianship Services (BGS) means the unit within the Division of Developmental Disabilities, which has the responsibility and authority to provide guardianship of the person services to individuals in need of such services.
 - 2. "Chief Executive Officer (CEO)" means the person having administrative authority over a developmental center.
 - 3. "Guardian ad litem" means a person appointed by a court to perform an extremely limited type of guardianship, namely to protect a child's or incapacitated adult's interest during a single instance of some form of court proceedings or litigation.

4. "Informed Consent" means a formal expression, oral or written, of agreement with a proposed course of action by someone who has the capacity, the information and the ability to render voluntary agreement or by someone with fiduciary authority to act for another's benefit.
 5. "Limited guardianship," means a legal disposition whereby a guardian is granted authority by a court of competent jurisdiction to act only in specifically prescribed areas of decision-making where an individual lacks capacity as defined in the court order.
 6. "Power of Attorney" means an instrument in writing whereby one competent individual, as principal, appoints another competent individual as his or her agent and confers authority to perform certain specified acts or kinds of acts on behalf of the principal. Such power may be either general (full) or special (limited).
 7. "Regional Administrator" means an employee of the Division with administrative authority over community operations within several counties.
 8. "Regional Assistant Director (RAD)" means an employee of the Division with administrative authority over community programs and institutions within a specific geographic region of the state.
- B. In securing informed consent, the individual or legal guardian must be apprised of:
1. Reasons for the request for consent;
 2. Potential benefit or intended outcome of the proposed action;
 3. Potential risk to the individual or others if the action is or is not implemented;
 4. Alternatives to the action that might be used and the reasons for choosing the planned action; and
 5. The right to disapprove this action or to withdraw approval at any time.
- C. When informed consent is either denied or subsequently withdrawn by the competent adult or legal guardian, and the CEO or Regional Administrator determines that such refusal is not in the individual's best interest:
1. The matter shall be referred to the RAD for further consideration.
 2. If the RAD believes that further consideration or possible judicial action is warranted, he or she shall refer the matter to the Director, Division of Developmental Disabilities or his/her designee.

- D. Under certain limited circumstances, the CEO or Regional Administrator may grant informed consent in accordance with Division Circular #32, "Authorization for Emergency Medical, Surgical, Psychiatric or Dental Treatment."
- E. When it is known that a legal guardian will not be available:
 - 1. Staff shall encourage the legal guardian to delegate decision-making authority for informed consent by power of attorney to a competent family member, friend, BGS or other interested party in order to assure the availability of a guardian.
 - 2. Delegation of decision-making authority shall terminate upon revocation of the power of attorney by the legal guardian or death of the legal guardian.
 - 3. A copy of the power of attorney shall be included in the client record.
- F. Except for BGS, power of attorney may not be delegated to Division staff, providers under contract with or regulated by the Division, or staff hired by providers or the agency they work for, if they are providing direct services to that individual.
- G. Generally, informed consent must be obtained annually. There may be standing consents that are valid until withdrawn by the competent adult or legal guardian.
- H. Privacy includes the use of photographs or videotapes.

VI. PROCEDURES:

- A. Informed consent shall be obtained by appropriate professional staff, as identified in the applicable Division Circular.
- B. When informed consent is required for medical, surgical, psychiatric or dental treatment or behavioral intervention, the individual obtaining the informed consent shall be qualified to explain the proposed action and to answer questions regarding the proposed action.
- C. Informed consent shall be in writing except in urgent situations (e.g. emergency surgery, behavioral crisis).
- D. In urgent situations, informed consent may be obtained orally but shall later be confirmed in writing by the individual granting consent.
 - 1. When informed consent is obtained orally, a second staff member shall witness the consent.

2. Such witness shall be documented in the client record.
- E. All attempts to obtain informed consent, as well as the results of attempts to obtain written consent, shall be documented in the client record.
 - F. In order to establish lack of response to a request for informed consent, two mailings, one via certified mail and one by regular mail, shall occur. These attempts may be made simultaneously.
 - G. The request for informed consent shall include a date, by which a response is required no later than 10 calendar days.
 - H. When informed consent for medical, surgical, psychiatric, or dental treatment or behavioral intervention is refused by an individual or the legal guardian:
 1. The efforts of staff to obtain the informed consent shall be documented in the client record.
 2. The individual or legal guardian shall be requested to sign a refusal of the recommended treatment or intervention.

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Director