File: A-18

LAKE COUNTY BOARD OF DD/DEEPWOOD

BOARD POLICY

Reviewed and Adopted by the Board:
Date: August 23, 2010

Signature on file
Elfriede Roman, Superintendent

I. SUBJECT: INFORMED CONSENT

II. PURPOSE:

To establish a policy with supporting administrative procedures to obtain voluntary written informed consent permitting a specific proposed procedure, action, treatment, program or service from a consumer 18 years of age or older with or without a concurrent consenter. This policy is not intended to apply for guardianship determinations; refer to Board Policy C-9 Guardianship.

III. REFERENCE:

42 CFR □483.420(a) Conditions of Participation for ICFs/MR: Client Protections
ORC □§ 5123.86 Medical treatment; necessary consent in order to act.
ORC § 5126.043 Guardian authority as to consent; incompetent's participation in decisions.
OAC 3301-51-01 ODE Education of students with special needs
OAC 3701-83-21 ODH Medical Records
OAC 5123:2-1-02 (J) DODD County Bd. Administration
OAC 5123:2-1-04 DODD Early Intervention
OAC 5123:2-1-06 DODD Adult Services
OAC 5123:2-3-25 DODD Discipline, restraint, behavior modification and abuse of residents
LCBDD/Deepwood Policy A-21 Behavior Support
LCBDD/Deepwood Policy A-19 Psychotropic Medication
LCBDD/Deepwood Policy A-20 Human Rights
LCBDD/Deepwood Policy C-9 Guardianship
CARF Employment and Training Standards Manual

IV. POLICY:

No consumer of any Board directed program(s) or service(s) shall be subjected to any (1) surgery, (2) convulsive therapy (excluding defibrillation), (3) aversive behavioral

intervention, (4) sterilization, (5) experimental procedures, (6) unusual or hazardous treatment or (7) medical examinations and dental procedures without his/her informed consent, concurrent consent, or consent of legal guardian. Emergencies involving surgical decisions will be handled in accordance with O.R.C 5123.86.

Individuals are presumed to have the capacity to provide, refuse to provide and to withdraw informed consent unless and until a court has made a determination otherwise and/or appointed a guardian. Even when an individual's capacity to provide informed consent has been limited or abridged by a judicial determination of incompetency and/or guardianship/conservatorship, individuals with mental retardation or other developmental disabilities have the right to participate in decisions which affect their lives and to have their wishes considered. If the ability of an individual to provide informed consent is in doubt, then the party seeking such consent has an obligation to ascertain the person's capacity to provide informed consent for that specific procedure, action, treatment, program, or service and to test or otherwise assess the individual's understanding of the information presented to him/her.

The obligation to ascertain capacity and to obtain and document informed consent shall be in a direct proportion to the degree of risk and/or the potential irreversible impact or intrusiveness of the proposed, action, treatment, program or service; and in inverse proportion to the individual's capacity.

In cases of high risk, intrusiveness or irreversibility, it may be necessary to seek a clinical or judicial determination of capacity. In cases of low risk, intrusiveness or irreversibility, it may be appropriate to accept the consent of the individual with or without a concurrent consenter such as a family member or friend who, because of his/her friendship, affinity or relationship with the individual, is in the best position to know or understand the person's wishes. However, no staff member who participates in developing or implementing a specific intervention or has responsibility to oversee or monitor the effects of the specific intervention may act as concurrent consenter. For purposes of ascertaining the required level of capacity and extent of informed consent required, if any, the following guidelines shall apply:

A. High Risk:

1) Attachment A to be completed by at least two IP team representatives.
2) Requires agreement by entire team of individual's capacity to consent.
3) If no agreement, refer to social worker for further assessment per Board Policy C-9 Guardianship.
4) Requires informed consent by the deemed competent individual or from parent/guardian of a minor or from a court appointed guardian.
5) Includes sterilization, unusual or hazardous treatment and surgery requiring general anesthetic.
6) Any procedure, action, treatment, program or service identified by the team as having high risk, intrusiveness or irreversibility.

B. Low Risk:

1) Capacity evaluated by two IP team representatives using Attachment A.
2) Concurrent consent as defined above if appropriate.
3) Includes aversive behavioral intervention, restraint, routine medical and dental procedures and surgery involving local anesthetic.

C. Full disclosure of the information relating to the nature of the informed consent being sought must be documented on attached Form "A": "Evaluation of Capacity to provide Informed Consent". Information must be provided to parents of minor children in his or her native language or other appropriate mode of communication**.** At a minimum, the individual and/or family member/guardian/concurrent consenter shall be provided with the following information:

1) A description of the proposed procedure, action, treatment, program or service, including the names of medications, if any. Notation of any procedure considered experimental due to its unusual nature or because the risk and/or results of the procedure are unknown or speculative;
2) Description of the expected benefits to be derived from the use of the proposed procedure, action, treatment, program or service;
3) A description of the risks, side effects or discomfort which may result from the implementation of the of the proposed procedure, action, treatment, program or service;
4) A disclosure of alternative procedures, actions, treatments, programs or services which have not been tried and are available;
5) A disclosure of alternative procedures, actions, treatments, programs or services which have been tried unsuccessfully;
6) Description of possible risk of not receiving the proposed procedure, action, treatment, program or service;
7) The name, telephone number and availability of a staff member who the consumer can contact with any additional questions;
8) A statement that the individual's consent is voluntary and may be withdrawn or modified at any time;
9) A statement that if a refusal to or withdrawal of consent results in a loss of or decrease in service, the individual is entitled to utilize the Board's due process procedure;
10) The dates of the beginning and end of individual's consent which shall not exceed 12 months in duration;
    a) Consent shall be in effect for one year from the date of Behavior Support Committee approval of the Behavior Support Plan.
11) A statement that no legal or human rights are being waived by way of individual's consent;
12) Documentation of the manner in which full disclosure of information was conveyed to the individual which shall be in the manner most likely to be understood by the person

D. Informed Consent:

1) It shall be the responsibility of a member of the IP team to obtain the appropriate informed consent (Attachment B) and document the same in the IP. The signed informed consent shall be kept in the individual's master record. A copy of the signed informed consent may be kept in the person's working file in the section pertaining to the proposed procedure, action, treatment, program or service.
2) Informed consent for medication to address mental health issues, control behavior or for the use of psychotropic medications shall be obtained by the nursing department and kept in the individual's master medical record. A copy will be provided for the working file and the applicable day program.
3) All informed consents must be updated at least annually, with any behavior or psychotropic medication changes and at any time revisions to behavior programs require resubmission to the Behavior Support Committee.

E. When an individual is deemed to be unable to give informed consent for procedure, action, treatment, program or service recommended by the IP team which because of its high degree of risk, intrusiveness or irreversibility, requires informed consent; the team shall initiate a referral to social work for further assessment for possible guardianship.

F. During the time a petition for guardianship is filed and the court makes its determination, the procedure, action, treatment, program or service may be implemented under the following conditions.

1) That the individual has no objection to the proposed procedure, action, treatment, program, or service.
2) The team determines that the absence of the proposed procedure, action, treatment, program or service will have detrimental physical or medical effects of a serious nature to the individual;
3) The Behavior Support Committee has reviewed the proposed procedure, action, treatment, program or service (except medical interventions) and determined that the absence of the proposed procedure, action, treatment, program, or service will have detrimental effects of a serious nature to the individual.
4) That the Human Rights Committee has reviewed the proposed procedure, action, treatment, program or service and determined that the absence of the proposed procedure, action, treatment, program, or service will have detrimental effects of a serious nature to the individual.
5) That the family members; family actively involved with the individual have no objection to the proposed procedure, action, treatment, program or service.

Evidence of all five criteria being met must be maintained in the individual's master file.

V. DISTRIBUTION:

Board Members
All Management Staff
All Staff (via Department Managers)
PATMR President

VI. REVIEWED:

08/10, 09/08, 06/06, 11/05, 10/03**,** 10/01, 03/99, 01/99, 12/95