

LAKE COUNTY BOARD OF DD/DEEPWOOD

BOARD POLICY

Reviewed and Adopted by the Board:
Date: August 22, 2022

Signature on File
Elfriede Roman, Superintendent

I. SUBJECT: INFORMED CONSENT

II. PURPOSE:

To establish a policy to obtain voluntary written informed consent permitting a specific proposed procedure, action, treatment, program or service from an individual 18 years of age or older with or without a concurrent consentor.

III. REFERENCE:

42 CFR § 483.420 Conditions of Participation: Client Protections
ORC 5123.86 Consent for Medical Treatment
ORC 5126.043 Decisions by individuals with mental retardation or other developmental disability; authorization for decision by adult; decisions by guardian
OAC 3301-51-01 Applicability of requirements and definitions
OAC 3701-83-11 General medical records requirements
OAC 5123-2-06 Development and implementation of behavioral support strategies
OAC 5123-4-01 Administration and operation of county boards of developmental disabilities
OAC 5123-4-02 Service and support administration
LCBDD/Deepwood Policy A-11 Program Records of Individuals Served by the Board
LCBDD/Deepwood Policy A -19 Use of Medication to Manage Behaviors
LCBDD/Deepwood Policy A-20 Human Rights Committee
LCBDD/Deepwood Policy A-21 Behavior Support
LCBDD/Deepwood Policy A-27 Rights of Persons with Developmental Disabilities
LCBDD/Deepwood Policy A-37 Media Contact
LCBDD/Deepwood Policy B-23a Social Network and Privacy Laws
LCBDD/Deepwood Policy C-9 Guardianship
LCBDD/Deepwood Administrative Procedure C-9 Guardianship

IV. POLICY:

No individual of any Board operated program(s) or service(s), either directly or through contract, shall be subjected to any (1) surgery, (2) convulsive therapy (excluding defibrillation), (3) restrictive behavioral-strategy, (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 ORC 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. 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 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 individual'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 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.

- A. In cases of **high risk**(i.e. any procedure, action, treatment, program or service identified by the team as having high risk, intrusiveness or irreversibility - includes sterilization, unusual or hazardous treatment and surgery requiring general anesthesia), it may be necessary to seek a clinical or judicial determination of capacity.
- B. In cases of **low risk** (any procedure, action, treatment, program or service identified by the team as having low risk, intrusiveness or irreversibility-includes behavioral support strategies with restrictive measures, routine medical and dental procedures and surgery involving local anesthesia) 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 relationship with the individual, is in the best position to know or understand the individual'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.
- C. For purposes of ascertaining the required level of capacity and extent of informed consent required, if any, the following guidelines shall apply:

- 1) Attachment A – Evaluation of Capacity to Provide Informed Consent to be completed by at least two IP team representatives.
- 2) Requires agreement by entire team regarding the individual's capacity to consent.
 - For individuals served in a CB operated program, either directly or through contract, and where there is not team consensus, the team leader may refer to social work for further assessment per Administrative Procedure C-9 Guardianship.
For individuals served by private Providers and where there is not team consensus, the SSA may make a referral for a consult for further assessment through community resources available to the individual, or if there are none available, follow the SSA procedure to make a referral for a psychological consult for further assessment(requires SSA Director approval).
- 3) Requires informed consent by the deemed competent individual, parent/guardian of a minor or a court appointed guardian.

D. Full disclosure of the information relating to the nature of the informed consent being sought must be documented on Attachment A to this policy. At a minimum, the individual and/or family member/guardian/concurrent consenter shall be provided with the following information in his or her native language or other appropriate mode of communication:

- 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) A 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 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 and have not been successful;
- 6) A description of the 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 individual may 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 then, the individual is entitled to utilize the Board's due process procedure;
- 10) A statement that no legal or human rights are being waived by way of

individual's consent;

- 11) 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, diagnoses, 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 psychotropic medication changes and at any time revisions to behavioral support strategies require-submission to the Human Rights Committee.

E. When an individual is deemed unable to give informed consent for a procedure, action, treatment, program or service recommended by the team that is high risk, intrusive or irreversible, the following shall apply:

- For individuals served in a CB operated program, either directly or through contract, the team leader may refer to social work for assistance with the process to obtain a Guardian per Administrative Procedure C-9 Guardianship.
- For individuals served by private Providers the SSA may assist the individual/family with the process to obtain a Guardian per Administrative Procedure C-9 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) That the team determines that the absence of the proposed procedure, action, treatment, program or service will have detrimental and serious physical or medical effects on the individual;
- 3) That the Human Rights Committee has reviewed the proposed procedure, action, treatment, program or service and is in agreement that the absence of the proposed procedure, action, treatment, program, or service will result in a risk of serious harm to the individual and/or a risk of legal sanction.

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- 4) That the family members who are actively involved with the individual have no objection to the proposed procedure, action, treatment, program or service.

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

V. DISTRIBUTION:

Board Members

All Management Staff

All Staff (via Department Managers)

LEADD President

VI. REVIEWED:

08/22, 08/20, 08/18, 08/17, 08/16, 08/15, 08/14, 08/13, 08/12, 08/10, 09/08, 06/06, 11/05, 10/03, 10/01, 03/99, 01/99, 12/95