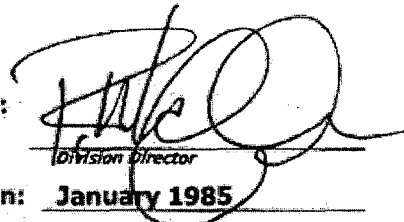


Delaware Health and Social Services
Division of Developmental Disabilities Services
Dover, Delaware

Title: Consent (Elective Surgery) by
Division Director/Designee

Approved By:



Division Director

Written/Revised By: DDDS Policy Committee

Date of Origin: January 1985

Date of Current Review/Revision: September 2010

I. Purpose

To establish standards and procedures for obtaining informed consent for elective surgery, from the Director of the Division of Developmental Disabilities Services (DDDS) or his/her designee, for individuals without a guardian who are receiving residential services from the Division of Developmental Disabilities Services (Title 16 Del. C. §5530).

II. Policy

Individuals who do not have the capacity to give informed consent for a specific medical or dental procedure, as specified in Title 16 Del. C. §5530-5531, shall be provided with as much understandable information about the procedure as possible, in conjunction to seeking the decision making authority of the Director of the DDDS or his/her designee.

III. Application

Individuals of the Division of Developmental Disabilities Services receiving residential services at Stockley Center and/or Community Services/Special Populations.

IV. Definitions

A. Alternative Decision Maker- "A person identified to make decisions for an individual in that individual's best interest. In the absence of an assigned legal guardian of person or applicable advanced health care directive, power of attorney, or similar legal instrument, any member of the following classes of the patient's family who is reasonably available, in the descending order of priority may act as alternative decision maker and shall be recognized as such by the supervising health care provider:

1. The spouse;
2. An adult child;
3. A parent;
4. An adult brother or sister;
5. An adult grandchild;
6. An adult aunt or uncle;
7. An Adult niece or nephew; or
8. A Grandparent" (Title 16 of Del. C., Ch. 55 §5530).

B. Elective Surgery – "A surgical medical or dental procedure, not including sterilization, for the purposes of nonlife-threatening treatment or diagnosis." (Title 16 Del. C., Ch. 55 § 5530)

C. Case Summary – A collection of reports concerning the individual and the proposed elective

procedure presented to the Director of DDDS or his/her designee. The Case Summary shall incorporate the following information:

1. Statement of medical or dental condition that warrants the elective procedure/diagnosis with treatment recommendations from one or more physicians/dentists, not employed by the Division of Developmental Disabilities Services;
2. Documentation supporting the need for the proposed medical or dental intervention;
3. Medical/surgical history;
4. Statement of the risks and benefits of the proposed procedure versus the consequences of not having proposed procedure done;
5. Statement by either the Director of Behavioral Services/designee or a licensed clinical practitioner which attests to the capacity of the individual receiving services to understand his/her medical or dental condition and the implications of the proposed procedure;
6. Completed Consent Request for Elective Surgery form;
7. Copy of the Mental Health Support Plan Review and supporting documents (CS/ASP) or Restrictive Procedure Request for Psychotropic Medication (Stockley Ctr.) for consent requests involving treatment with a psychotropic medication;
8. Other supporting documentation as requested by the Division Director/designee.

- D. Director of Behavioral Services Designees – A licensed clinical practitioner designated by the Director of Behavioral Services to fulfill his/her responsibilities relative to determining an individual's capacity to give consent.
- E. Director's Designee - A person(s) designated by the Director of DDDS to fulfill his/her responsibilities relative to consent for elective surgery.
- F. Informed Consent - "Informed Consent is the consent of a patient to the performance of health care services by a health care provider who has informed the patient both verbally and in writing, to an extent reasonably comprehensible to general lay understanding, of the nature of the proposed procedure or treatment and of the risks and alternatives to treatment which a reasonable patient would consider material to the decision whether or not to undergo the treatment. The patient must understand the information provided by the health care provider." (16 Del. C., Ch. 55 § 5530)
- G. Legal Guardian – The legal status conferred by the Delaware Court of Chancery upon a party/parties granting the authority to manage the personal and/or financial affairs of another person who has been judged by the court to be incompetent to handle such affairs himself/herself. Legal Guardians must specifically hold "guardianship of person" for their consent regarding a medical procedure to be considered legal. A parent is considered the "natural guardian" of their child until the child reaches age 18 years.

V. Standards

- A. "Consent to perform elective surgery upon a person who is receiving services from the Division of Developmental Disabilities Services may be given by the Division Director or his/her designee if all of the following circumstances apply:
- (1) the person receiving residential services cannot give his/her own informed consent;
 - (2) the person receiving services has no alternative decision maker;

- (3) the person receiving residential services has no legal guardian of the person." (16 Del C., Ch 55§5531).
- B. The Division Director/designee shall be notified immediately when elective surgery is recommended and his/her consent is required.
- C. Before giving consent for elective surgery, the Director shall:
1. Be satisfied that the elective surgery is in the best interest of the individual and is an appropriate and least intrusive treatment for the existing condition;
 2. Obtain written recommendation for elective surgery of one physicians or dentist, as the case may be, not employed by the Division of Developmental Disabilities Services; (one of these opinions can be that of a community physician providing consultant services to Stockley Center);
 3. Ensure that the individual has been informed to the extent that he/she is able to understand the medical or dental procedure suggested.
 4. Be satisfied that the individual has received a non-clinical explanation of the proposed procedure.
- D. The Director of DDDS/Designee shall not have the authority to provide consent for sterilization.
- E. Unless requested otherwise by the individual, efforts shall be made to obtain the consent of an alternative decision maker if the individual cannot give his/her own informed consent.
- F. The DDDS Behavioral Services Department shall implement a standardized form whereby the methodology for assessing an individual's capacity to give consent is documented. Contracted licensed clinical practitioners shall also use the DDDS standardized assessment form used for determining capacity to give consent.
- G. A list of individuals receiving services with assigned legal guardians shall be maintained by the DDDS Health Information Management (HIM) Department and by each Regional Community Services Residential Office. The list shall be updated as guardianship changes occur. Copies of Court Orders appointing legal guardians shall be maintained by the Health Information Management Department (HIM).
- H. Stockley Center, DDDS Community Services, and contractors of services to people supported by DDDS residential or day services (including Stockley Center) shall establish internal protocol/procedure for the implementation of the standards setforth in this policy.
- I. Internal protocol/procedure shall be made available to the DDDS Director of Policy Development, as requested.
- J. This policy shall be effective immediately upon DDDS dissemination.

VII. References

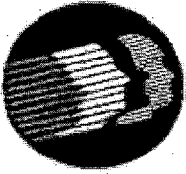
Delaware Code, Title 16, Sections 5530-5531.
CS/ASP Behavior and/or Mental Health Support Policy

Stockley Ctr. Programming and Medication Review Committee Policy

VIII. Exhibits

A. Consent Request for Elective Surgery

B. Delaware Code, Title 16, Chapter 55, Sections 5530-5532



CONSENT REQUEST FOR ELECTIVE SURGERY

Individual's Name

D.O.B.

MCI #

Residence

Case Summary

1. Medical condition/diagnosis with treatment recommendation by 1 physician or dentist:

Physician or Dentist's Name

2. Documentation supporting need for proposed medical/dental intervention:

3. Past medical/surgical history:

4. Risks and benefits vs. consequences:

5. Capacity of individual to understand the proposed procedure.

6. Does the individual have a family member who could serve as an alternative decision maker and is willing to serve in the individual's best interest? If not, what has been done to explore this option?

7. Does the individual have any living relatives? If so, please list their names and contact information.

Signature, Title and Date of Preparer of Form

EXHIBIT B

Delaware Code, Title 16

§ 5530. Definitions.

(a) "Alternative decision maker" is a person identified to make decisions for an individual in that individual's best interest. In the absence of an assigned legal guardian of person or applicable advanced health care directive, power of attorney, or similar legal instrument, any member of the following classes of the patient's family who is reasonably available, in the descending order of priority, may act as alternative decision maker and shall be recognized as such by the supervising health care provider:

- (1) The spouse;
- (2) An adult child;
- (3) A parent;
- (4) An adult brother or sister;
- (5) An adult grandchild;
- (6) An adult aunt or uncle;
- (7) An adult niece or nephew; or
- (8) A grandparent.

(b) "Elective surgery" is a surgical medical or dental procedure, not including sterilization, for the purposes of nonlife-threatening treatment or diagnosis.

(c) "Informed consent" is the consent of a patient to the performance of health care services by a health care provider who has informed the patient both verbally and in writing, to an extent reasonably comprehensible to general lay understanding, of the nature of the proposed procedure or treatment and of the risks and alternatives to treatment which a reasonable patient would consider material to the decision whether or not to undergo the treatment. The patient must understand the information provided by the health care provider.

(d) "Persons receiving services from the Division of Developmental Disabilities Services (DDDS)" shall mean, for the purposes of this subchapter, those persons served within the residential program of the Division.

(e) Individuals specified in this subsection are disqualified from acting as an alternate decision maker if the person receiving services from DDDS has filed a petition for a protection from abuse order against the individual or if the individual is the subject of a civil or criminal order prohibiting contact with the person receiving services from DDDS.

64 Del. Laws, c. 305, § 1; 73 Del. Laws, c. 97, § 3; 75 Del. Laws, c. 69, §§ 1, 2; 77 Del. Laws, c. 395, §§ 1-3, 9;

§ 5531. Persons without legal guardians.

(a) Consent to perform elective surgery upon a person who is receiving services from the Division of Developmental Disabilities Services ("DDDS") may be given by the Division Director or his or her designee if all of the following circumstances apply:

(1) The person receiving residential services cannot give his or her own informed consent;

(2) The person receiving services has no alternative decision maker; and

(3) The person receiving residential services has no legal guardian of the person, or applicable advanced health care directive, power of attorney, or similar legal instrument.

(b) Before giving such consent the Division Director or his or her designee must:

(1) Be satisfied that the elective surgery is in the best interest of the person receiving services from DDDS and is an appropriate and least intrusive treatment for the existing condition;

(2) Obtain the written recommendation for elective surgery from at least 1 physician or 1 dentist, as applicable, who are not directly employed by the DDDS; and

(3) Ensure that the person receiving services from DDDS has been informed to the extent the person is able to understand about the medical treatment or procedure suggested.

64 Del. Laws, c. 305, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 97, § 4; 77 Del. Laws, c. 395, §§ 4-8;

§ 5532. Immunity from liability.

(a) No physician, dentist or other health care personnel or health care facility which acts pursuant to and in compliance with this subchapter shall be subject to civil liability for failure to obtain sufficient consent for the medical procedure performed.

(b) This section shall not insulate from civil liability a physician, dentist or other health care personnel or health care facility for negligence in the performance of medical procedures.

64 Del. Laws, c. 305, § 1.;



CONSENT REQUEST FOR ELECTIVE SURGERY

Individual's Name

D.O.B.

MCI #

Residence

Case Summary

1. **Medical condition/diagnosis with treatment recommendation by 1 physician or dentist:**

Physician or Dentist's Name

2. **Documentation supporting need for proposed medical/dental intervention:**
3. **Past medical/surgical history:**
4. **Risks and benefits vs. consequences:**
5. **Capacity of individual to understand the proposed procedure.**
6. **Does the individual have a family member who could serve as an alternative decision maker and is willing to serve in the individual's best interest? If not, what has been done to explore this option?**

7. **Does the individual have any living relatives? If so, please list their names and contact information.**

Signature, Title and Date of Preparer of Form