

**STATE OF CONNECTICUT
DEPARTMENT OF DEVELOPMENTAL SERVICES**

Health Standard No.: 19-1

Subject: Consent Required for Medical or Dental

Procedures including Emergency Surgery

Section: Health Standards

Issue Date: July 1, 2019

Effective Date: Upon release

Approved:/s/Jordan A. Scheff/LT

Introduction

In accordance with [subsection \(f\) of section 17a-238 of the Connecticut General Statutes](#), an “attending physician of any person placed or treated in a residential facility” is required “to obtain informed written consent from” either: “(1) The person if such person is eighteen years of age or over or is legally emancipated and competent to give such consent; (2) the parent of a person under eighteen years of age who is not legally emancipated; or (3) the legal representative of a person of any age who is adjudicated unable to make informed decisions about matters relating to such person's medical care” before the physician authorizes “any surgical procedure or any medical treatment, excluding routine medical treatment which is necessary to maintain the general health of the person or to prevent the spread of any communicable disease”. If an individual’s legal representative is not able to be contacted to give or withhold consent then the Commissioner of Developmental Services may give consent for a surgical procedure or medical treatment for an individual until such time as the individual’s legal representative is available to give or withhold consent. In the case of an individual requiring emergency surgery, if the individual’s legal representative is unavailable to give or withhold consent then the DDS regional or training school director may provide consent for the emergency surgery.

A. Purpose

The Department of Developmental Services and its qualified providers, in cases where an individual requires a medical treatment or surgical procedure, including emergency surgery, are required to make every effort to provide contact information for an individual’s legal representative to medical personnel so that consent may be obtained from the legal representative for the treatment or procedure. This Health Standard details the process by which contact information for a legal representative is provided, what steps are taken if a legal representative is not able to be contacted, and the department’s and commissioner’s responsibility to provide or deny consent in the absence of an individual’s legal representative.

B. Applicability

This health standard applies to all employees of the Department of Developmental Services and its qualified providers who have direct care responsibilities or oversight responsibilities for individuals for whom the department provides funding or services. This standard also applies to all legal representatives of individuals receiving funding or services from DDS.

C. Definitions

“Individual” means a person who receives funding or services from the Department of Developmental Services.

D. Implementation

1. The Planning and Support Team of an individual who has a legal representative for medical decision-making shall contact such legal representative so that the legal representative may give the attending physician consent for the individual to undergo “any surgical procedure or any medical treatment.” The legal representative’s consent must be obtained even if the medical treatment is of an urgent nature. A legal representative’s consent does not need to be given for “routine medical treatment which is necessary to maintain the general health of the person or to prevent the spread of any communicable disease”. The individual’s Planning and Support Team should anticipate when the individual will need surgery or a medical treatment and be able to contact the individual’s legal representative in a timely manner so that consent may be given or withheld.

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2. In the event that the legal representative cannot be contacted by the Planning and Support Team, the individual's case manager or case manager supervisor and the regional Health Services Director or the Director of Nursing for Public Programs shall be notified. The case manager or case manager supervisor and the regional Health Services Director or the Director of Nursing for Public Programs shall collaborate in efforts to contact the individual's legal representative.
3. If the case managers' or directors' attempts at contacting the legal representative are unsuccessful, the Regional Director shall be notified and provided with supporting documentation of the attempts to reach the individual's legal representative, along with medical documentation from the hospital, physician, dentist, healthcare provider, etc., that outlines the necessary medical or dental treatment or surgical procedure, and the contact information of the healthcare provider in order for the Regional Director to communicate with the healthcare provider concerning the recommended treatment or procedure, any associated risks, benefits, other options, plan of care, and plan for recovery. The Regional Director or his or her designee shall attempt to contact the individual's legal representative for consent and, if unsuccessful, shall refer the matter to the Commissioner.
4. The Commissioner may decide, in the absence of contact with the individual's legal representative, that the individual's recommended medical treatment or surgical procedure may proceed under the Commissioner's authority in subsection (e) of section 17a-238 of the Connecticut General Statutes that states: "The Commissioner of Developmental Services shall ensure that each person placed or treated under the commissioner's direction in any public or private facility is afforded the following rights and privileges: (1) The right to prompt, sufficient and appropriate medical treatment". The Commissioner's decision shall be in effect until such time as the individual's legal representative has been contacted and consent has either been given or withheld for the medical treatment or surgical procedure.
5. **No public or private agency administrator or employee, other than the Commissioner of Developmental Services or a DDS regional or training school director, may consent for an individual to have a medical treatment or a surgical procedure.** The individual's legal representative is required to give or withhold this consent. No public or private agency administrator or employee shall withhold the individual's legal representative's contact information from the individual's attending physician or any authorized person seeking to contact the individual's legal representative for the purposes of obtaining consent for a medical treatment or surgical procedure.
6. Staff accompanying an individual to a medical or dental appointment should be reminded that a staff person is not permitted to consent to treatment, even in cases where the legal representative has signed an agency form permitting the agency to seek medical treatment for the individual.
7. To assure that appropriate consent from the legal representative is in place prior to an individual's medical or dental appointment, the residential provider staff shall provide the healthcare provider (i.e., physician, dentist, nurse practitioner, physician's assistant, etc.) with the name and contact information for the individual's legal representative. It is strongly recommended that a residential provider ensures that consent forms are given to the individual's legal representative or the individual prior to the date of the appointment whenever possible. An individual who does not have a legal representative for medical decision-making may benefit from receiving consent forms prior to an appointment in order for the healthcare provider or a nurse to help clarify any questions or concerns the individual may have.
8. If an individual requires emergency surgery and the individual's legal representative has not been able to be contacted to provide or withhold consent for the emergency surgery, the regional or training school director may "authorize necessary surgery for such person where, in the opinion of

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the person's attending physician, the surgery is of an emergency nature and there is insufficient time to obtain the required written consent” in accordance with subsection (f) of section 17a-238 CGS.

9. Section 17a-238 of the Connecticut General Statutes does not allow for or give anyone the ability to change an individual’s code status.
10. If there are any questions or concerns regarding this Health Standard, please contact the appropriate Regional Health Services Director (HSD). Please refer to the [DDS website](#) or a regional contact for the appropriate Regional Health Services Director’s name and contact information. In the event that the HSD is unable to answer the question, resolve the concern, or if there are additional questions, please contact [Dr. Valencia Bagby-Young](#), DDS Director of Health and Clinical Services, at the DDS Central Office.

E. References

Subsection (f) of section 17a-238 of the Connecticut General Statutes

(f) The Commissioner of Developmental Services shall require the attending physician of any person placed or treated in a residential facility under the direction of the commissioner to obtain informed written consent from the following persons prior to authorizing any surgical procedure or any medical treatment, excluding routine medical treatment which is necessary to maintain the general health of the person or to prevent the spread of any communicable disease: (1) The person if such person is eighteen years of age or over or is legally emancipated and competent to give such consent; (2) the parent of a person under eighteen years of age who is not legally emancipated; or (3) the legal representative of a person of any age who is adjudicated unable to make informed decisions about matters relating to such person's medical care. The person whose consent is required shall be informed of the nature and consequences of the particular treatment or surgical procedure, the reasonable risks, benefits and purpose of such treatment or surgical procedure and any alternative treatment or surgical procedures which are available. The consent of any person or of any parent or legal representative of any person may be withdrawn at any time prior to the commencement of the treatment or surgical procedure. The regional or training school director having custody and control of a person living in a residential facility may authorize necessary surgery for such person where, in the opinion of the person's attending physician, the surgery is of an emergency nature and there is insufficient time to obtain the required written consent provided for in this section. The attending physician shall prepare a report describing the nature of the emergency which necessitated such surgery and shall file a copy of such report in the patient's record.

F. Attachments

None.