

9525.2780 REQUIREMENTS FOR OBTAINING INFORMED CONSENT.

Subpart 1. [Repealed, 18 SR 1141]

Subp. 2. **When informed consent is required.** Except in situations governed by part 9525.2730, subpart 3 or 9525.2770, the case manager must obtain or reobtain written informed consent before implementing the following:

- A. a controlled procedure for which consent has never been given;
- B. a controlled procedure for which informed consent has expired. Informed consent must be obtained every 90 days in order to continue use of the controlled procedure;
or
- C. a substantial change in the individual program plan.

If the case manager is unable to obtain written informed consent, the procedure must not be implemented.

Subp. 3. **Authority to give consent.** Individuals authorized to give informed consent are specified in items A to E.

A. If the person has a legal guardian or conservator authorized by a court to give consent for the person, consent is required from the legal guardian or conservator.

B. If the person is a child, consent is required from at least one of the child's parents, unless the child has a legal guardian or conservator as specified in item A. If the parents are divorced or legally separated, the consent of the parent with legal custody is required, unless the separation or marriage dissolution decree otherwise delegates authority to give consent for the child.

C. If the commissioner is the legal guardian or conservator, consent is required from the county representative designated to act as guardian on the commissioner's behalf. Failure to consent or refuse consent within 30 days of the date on which the procedure requiring consent was approved by the expanded interdisciplinary team is considered a refusal to consent. The county representative designated to act as guardian must not be the same individual who is serving as case manager.

D. If the person is an adult who is capable of understanding the information required in subpart 4 and of giving informed consent, informed consent is required from the person.

E. If the person is an adult who has no legal guardian or conservator and who is not capable of giving informed consent, the case manager shall petition a court of competent jurisdiction to appoint a legal representative with authority to give consent, and consent is required from the legal representative.

Subp. 4. **Information required to obtain informed consent.** The case manager shall provide the information specified in items A to K to the legal representative as a condition of obtaining informed consent. Consent obtained without providing the information required in items A to K is not considered to be informed consent. The case manager shall document that the information in items A to K was provided orally and in writing and that consent was given voluntarily. The information must be provided in a nontechnical manner and in whatever form is necessary to communicate the information effectively, such as in the person's or the legal representative's native language if the person or the legal representative does not understand English or in sign language if that is the person's or the legal representative's preferred mode of communication, and in a manner that does not suggest coercion. The information must consist of:

- A. a baseline measurement of the target behavior;
- B. a detailed description of the proposed procedures and explanation of the procedures' function;
- C. a description of how the procedures are expected to benefit the person, including the extent to which the target behavior is expected to change as a result of implementing the procedures;
- D. a description of any discomforts, risks, or other side effects that it is reasonable to expect;
- E. alternative procedures that have been attempted, considered, and rejected as not being effective or feasible;
- F. the expected effect on the person of not implementing the procedures;
- G. an offer to answer any questions about the procedures, including the names, addresses, and phone numbers of people to contact if questions or concerns arise;
- H. an explanation that the person or the legal representative has the right to refuse consent;
- I. an explanation that consent may be withdrawn at any time and the procedure will stop upon withdrawal of consent;
- J. criteria for continuing, modifying, and terminating a procedure; and
- K. an explanation that:
 - (1) consent is time limited and automatically expires 90 days after the date on which consent was given;
 - (2) informed consent must again be obtained in order for use of a procedure to continue after the initial 90-day period ends; and

(3) the legal representative may request additional information related to parts 9525.2700 to 9525.2810 and must be provided a copy of the signed informed consent form by the case manager after it is received.

Subp. 5. **Consent for substantial change.** If the expanded interdisciplinary team has approved a substantial change in a procedure for which informed consent is in effect, the change may be implemented only when the case manager first obtains written informed consent for the substantial change by meeting the requirement in subpart 4.

Subp. 6. [Repealed, 18 SR 1141]

Subp. 7. **Appeals.** A person or the person's legal representative may initiate an appeal under Minnesota Statutes, section 256.045, subdivision 4a, for issues involving the use of a controlled procedure and related compliance with parts 9525.0015 to 9525.0165 and 9525.2700 to 9525.2810. If a court orders the use of faradic shock under part 9525.2730, subpart 3, the action of the court is not appealable under parts 9525.2700 to 9525.2810.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408; 18 SR 1141*

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