

LAKE COUNTY BOARD OF DD/DEEPWOOD

BOARD POLICY

Reviewed and Adopted by the Board:
Date: August 24, 2020

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 5123-4-01 Administration and operation of county boards of developmental disabilities
OAC 5123-4-02 Service and support administration
LCBDD/Deepwood Policy A-27 Rights of Persons with Developmental Disabilities
LCBDD/Deepwood Policy A-21 Behavior Support
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-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

LCBDD/DEEPWOOD Policy A-18

INFORMED CONSENT

Attachment

Page 2

IV. POLICY:

No individual of any Board directed program(s) or service(s) 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.

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 consentor 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 consentor. 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 regarding the 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, parent/guardian of a minor or a court appointed guardian.

LCBDD/DEEPWOOD Policy A-18

INFORMED CONSENT

Attachment

Page 3

- 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 restrictive behavioral-strategy, 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 Attachment A to this policy: "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 consentor 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) 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 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) A 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 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

LCBDD/DEEPWOOD Policy A-18

INFORMED CONSENT

Attachment

Page 4

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 Advisory Committee.

E. The IP team shall initiate a referral to social work to assess for possible guardianship 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.

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 Behavior Support Advisory 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 and serious effects on 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 and serious effects on 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.

LCBDD/DEEPWOOD Policy A-18

INFORMED CONSENT

Attachment

Page 5

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)

LEADD President

VI. REVIEWED:

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

LCBDD/DEEPWOOD Policy A-18

INFORMED CONSENT

Attachment

Page 6

ATTACHMENT A

INFORMED CONSENT A-18

EVALUATION OF CAPACITY TO PROVIDE INFORMED CONSENT

Name:

Date:—

Method by which information was presented to the individual

Name of team members who presented this information:

- 1.) Proposed procedure action, program, procedure, treatment or service including benefit to individual.

Method by which individual demonstrated understanding of this information; or demonstrates lack of understanding of this information:

- 2.) Possible side effects or risks associated with the proposed procedure action, program, method by which individual demonstrated understanding of this information; or demonstrates lack of understanding of this information:

- 3.) The possible risk of not receiving the proposed procedure action, treatment, program, procedure or service.

Method by which individual demonstrated understanding of this information; or demonstrate lack of understanding of this information

- 4.) Alternative actions, treatment, procedures, programs or services.

Method by which individual demonstrated understanding of this information; or demonstrate lack of understanding of this information:

Understanding of the voluntary nature of consent, refusal to consent or modification/withdrawal of consent.

Method by which individual demonstrated understanding of this information; or demonstrate lack of understanding of this information:

LCBDD/DEEPWOOD Policy A-18

INFORMED CONSENT

Attachment

Page 7

We the undersigned believe based on the above information that the individual **has has not** demonstrated an understanding of the treatment, program, procedure, action or service for which the consent is being sought.

A concurrent consent **is is not** recommended. (circle one)

Designated Team Members:

_____	_____
_____	_____

LCBDD/DEEPWOOD Policy A-18

INFORMED CONSENT

Attachment

Page 8

**LAKE COUNTY BOARD OF DD/DEEPWOOD
INFORMED CONSENT FORM
ATTACHMENT B**

Name: _

_

Date:

I understand that my IP team has recommended the following interventions to be utilized as part of the treatment plan for myself/son/daughter/ward.

1.) Proposed action, program, procedure, treatment or service (note if experimental):

2.) Expected benefits of the proposed procedure, action, treatment, program or service:

3.) Possible risk, discomfort or side effect associated with the proposed procedure, action, treatment, program or service:

4.) Alternative action, treatment, procedures, program or service which are available and have not been tried:

5.) Alternative procedures, action, treatment, program or service which have been tried and found unsuccessful:

6.) The possible risk of not receiving the proposed procedure, action, treatment, program or service:

LCBDD/DEEPWOOD Policy A-18

INFORMED CONSENT

Attachment

Page 9

7.) For further information about treatment contact:

Staff:
Title:
Staff Phone #:
Regular Work Hrs:

8.) Manner in which disclosure of information presented:

Written Verbal: Other:

I understand it is my choice to consent or not to consent to this action, program, procedure, treatment or service. I may withdraw my consent at any time by notifying the designated team member in writing.

If refusal to consent or withdrawal of consent results in decreased service, I am entitled to utilize the Board's due process procedure.

I will not lose any regular benefits if I do not give consent.

No legal or human rights are being waived by giving this consent.

I understand that for a Behavior Support Plan, the dates of consent will be based on the approval dates from Behavior Support Committee not to exceed one year in length.

For medication administration, I give my consent to this proposed action, treatment, procedure, program, service from: to
Adults: Minors:

As the legal parent/guardian of the individual:

Signature of Parent/Guardian Date

Signature of Guardian/Concurrent Consenter Date

Witness Date

Witness Date