

**DIVISION CIRCULAR #32
(N/A)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: September 15, 2006

DATE ISSUED: September 18, 2006

- I. TITLE:** **Authorization for Emergency Medical, Surgical, Psychiatric or Dental Treatment (Rescinds Division Circular #32, "Authorization for Emergency Medical, Surgical, Psychiatric or Dental Treatment", issued April 29, 2005)**
- II. PURPOSE:** To establish policies for the authorization of medical, surgical, psychiatric, and dental treatment for individuals in an expeditious manner when the individual or his or her legal guardian cannot or does not consent, in accordance with:
- A. N.J.S.A. 30:4-7.1 et seq.,
 - B. The judicial procedure for appointing a special medical guardian, pursuant to New Jersey Court Rule 4:86-12; and
 - C. The Commissioner and Division Director's authority to seek appropriate medical treatment for Division clients, pursuant to N.J.S.A. 30:4-25.7; N.J.S.A. 30:4-25.8 N.J.S.A. 30:6D-3(b); N.J.S.A. 30:6D-5(b); and N.J.S.A. 30:6D-17.
- III. SCOPE:** This circular applies to all components of the Division and agencies under contract with the Division or regulated by the Department, who provide services to Division eligible individuals.

IV. POLICIES:

- A. Informed consent for medical, surgical, psychiatric or dental treatment is to be provided as follows:
1. For a minor, the parent/guardian, if available, shall give informed consent;
 2. For an individual who is over the age of 18 and is his or her own guardian and is presently able to give consent, the individual shall give informed consent;
 3. For an individual who is over the age of 18 and has been adjudicated incapacitated in accordance with state law the legal guardian, if available, shall give informed consent; or
 4. For all other individuals informed consent shall be given in accordance with the procedures outlined in this circular.
- B. This circular outlines the procedures that Division staff and staff of agencies under contract with the Division are to follow to ensure that informed consent is obtained for medical, surgical, psychiatric or dental treatment for individuals.
- C. The Chief Executive Officer (CEO) and Regional Administrator (RA) shall not have authority to give informed consent in matters that are not medical in nature, as defined in IV. B of this circular.
1. In the event that a request is received for informed consent or permission for non-medical purposes such as recreational events (i.e. camp), the individual shall be asked to complete the consent form. If the agency sponsoring the camp activity or event will not accept this form, the CEO or RA may provide a statement endorsing the individual's participation in the activity but shall make the agency aware that, pursuant to N.J.S.A. 30:4-7.1 et seq., he/she does not have authority to provide consent for such participation.
 2. The CEO and RA shall not sign consent forms or permission slips that includes a statement that releases or holds the entity harmless from liability of any harm.

V. **GENERAL STANDARDS**

- A. Definitions For the purpose of this circular, the following terms shall have the meanings defined herein:

“Administrator” means Chief Executive Officer of a developmental center or the Regional Administrator of a regional office of Community Services.

“Appears to be an incapacitated person” means a person that the Administrator, after having had the benefit of the evaluations of his or her staff, believes in good faith would meet the standard of an incapacitated person.

“Affiant” means the individual completing an affidavit.

“Bureau of Guardianship Services (BGS)” means the unit within the Division that has the responsibility and authority to provide guardianship of the person to individuals in need of such services, in accordance with N.J.A.C. 10:45-1.2.

“Chief Executive Officer (CEO)” means the individual with administrative authority over a developmental center.

“Department” means the New Jersey Department of Human Services.

“Division” means the New Jersey Division of Developmental Disabilities.

“Grave Medical Emergency” means a situation in which:

1. An individual requires immediate:
 - a. surgical intervention;
 - b. other medical treatment;
 - c. psychiatric treatment; or
 - d. dental treatment; and
2. The surgical intervention, other medical, psychiatric or dental treatment is necessary in order to prevent the:

- a. death of an individual; or
- b. serious consequences to an individual.

“Individual” means an individual who is eligible for services from the Division of Developmental Disabilities.

“Incapacitated Person” means an individual over the age of 18 who has been found to have a significant chronic functional impairment to such a degree that the person either lacks the cognitive capacity to make decisions for himself or to communicate, in any way, decisions to others and has been adjudicated an incapacitated person by a court of competent jurisdiction. Significant chronic functional impairment includes, but is not limited to, a lack of comprehension of concepts related to personal care, health care, or medical treatment.

“Informed Consent” means a formal expression, oral or written, of agreement with a proposed course of action by an individual who has the capacity, the information, and the ability to render voluntary agreement or by an individual with fiduciary authority.

“Minor” means an individual less than 18 years of age.

“Reasonable Notice” means

1. notice in writing that includes:
 - a. describing the individual’s current medical situation;
 - b. the proposed medical, surgical, psychiatric or treatment;
 - c. the reason the proposed treatment is recommended;
 - d. the prognosis;
 - e. the telephone number of the Administrator;
 - f. a form on which the parent or guardian can indicate whether he or she will give informed consent to the treatment to be returned to the Administrator; and
 - g. a postage paid return envelope to mail the consent form.

2. mailed by regular U.S. and Certified Return Receipt Mail to the last known address of the parent or guardian; and
3. ten or more days in advance of the proposed treatment or if the situation is emergent, but not a grave emergency, as many days in advance of the proposed treatment as possible under the circumstances.

“Regional Administrator” means the individual with administrative authority over community operations within several counties.

“Special Medical Guardian” means an individual or the Bureau of Guardianship Services (BGS) appointed by the court to provide written consent to medical, surgical, psychiatric or dental procedures approved by the court, after two physicians, independent of one another, have concluded that an individual is incapacitated with respect to providing informed consent to medical, surgical, psychiatric or dental treatment and a physician attests that the prompt rendering of medical, surgical, psychiatric or dental treatment is necessary in response to a substantial threat to the individual's life or health.

- B. There may be life and death situations when time does not permit consent to be obtained without risk to the life of the individual. In such instances, the decision to proceed with the medical, surgical, psychiatric or dental treatment is made by the treating physician, surgeon, psychiatrist or dentist in accordance with their own policies and professional responsibilities.
- C. Where it is determined that an individual is in need of a special medical guardian, and no guardian is appointed, the Division will work with the medical care provider to have a special medical guardian appointed as soon as possible. If the medical provider is unwilling or unable to seek appointment of a special medical guardianship, BGS will make such application itself in accordance with this circular.

- D. Once a special medical guardian has been appointed, Division staff shall proceed to obtain general guardianship for the individual, if warranted, as soon as possible.

VI. **PROCEDURES FOR OBTAINING INFORMED CONSENT**

Procedures for each type of individual are listed in order of preference.

- A. For individuals who are over 18 years old and have been determined to not require a guardian in accordance with Division Circular # 6 (N.J.A.C. 10:43):
1. The individual shall give informed consent.
 2. In the event that the individual presently is unable to give informed consent the Administrator may give informed consent, consistent with a physician's certification as described below; and
 - a. Where a licensed professional certifies in writing that the situation presents a grave emergency; or
 - b. Where:
 - i. there is no parent or guardian
 - (a) known to the Administrator of the component after reasonable inquiry; or
 - (b) available, who is competent to give informed consent for the treatment of the individual; or
 - (c) who after reasonable notice to the parent or guardian of the proposed treatment, and prior to a date fixed in the notice for such treatment, refuses or neglects to execute and submit to such administrator a written notification expressing either grant or denial of informed consent for such procedure; and
 - ii. A licensed physician, surgeon, psychiatrist or dentist certifies in writing that the treatment to be performed:

- (a) is essential or beneficial to the general health and welfare of the individual; or
 - (b) will improve the individual's opportunity for recovery or prolong or save his or her life.
 3. A Special Medical Guardian appointed by the court shall give informed consent consistent with the court's order. In a situation where the individual or the Administrator cannot consent, the administrator shall immediately notify the Chief of BGS, who will work with the medical care provider to have a special medical guardian appointed or shall make such application itself as soon as possible.
- B. For a minor or a person with a guardian, whether it is BGS or individual appointed by the court, or BGS serving as administrative guardian:
 1. The guardian or administrative guardian shall give informed consent.
 2. The Administrator may give informed consent, consistent with a physician's certification as described below; and:
 - a. Where a licensed professional certifies in writing the situation presents a grave emergency; or
 - b. Where:
 - i. the guardian and/or parent(s)
 - (a) is deceased;
 - (b) is not presently competent to give informed consent for the treatment of the individual; or
 - (c) who after reasonable written notice of the proposed treatment, and prior to a date fixed in the notice for such treatment, refuses or neglects to execute and submit to such administrator a written notification expressing either grant or denial of informed consent for such procedure; and

- ii. a licensed physician, surgeon, psychiatrist or dentist certifies in writing that the treatment to be performed:
 - (a) is essential or beneficial to the general health and welfare of the individual; or
 - (b) will improve the individual's opportunity for recovery or prolong or save his or her life.
 - 3. A Special Medical Guardian appointed by the court shall give informed consent consistent with the court's order. In a situation where the individual or the Administrator cannot consent, the administrator shall immediately notify the Chief of BGS, who will work with the medical care provider to have a special medical guardian appointed or shall make such application itself as soon as possible.
- C. If there is an indication that a person may require a guardian and no guardian has been appointed:
 - 1. The Administrator may give informed consent consistent with a physician's certification as described below and:
 - a. Where a licensed professional certifies in writing that the situation presents a grave emergency; or
 - b. Where:
 - i. there is no parent or guardian
 - (a) known to the Administrator of the component after reasonable inquiry; or
 - (b) available, who is competent to give informed consent for the treatment of the individual; or
 - (c) who after reasonable notice to the parent or guardian of the proposed treatment, and prior to a date fixed in the notice for such treatment, refuses or neglects to execute and submit to such administrator a written notification expressing either grant or denial of informed consent for such procedure; and

- ii. A licensed physician, surgeon, psychiatrist or dentist certifies in writing that the treatment to be performed:
 - (a) is essential or beneficial to the general health and welfare of the individual; or
 - (b) will improve the individual's opportunity for recovery or prolong or save his or her life.
 2. A Special Medical Guardian appointed by the court shall give informed consent consistent with the court's order. In a situation where the individual or the Administrator cannot consent, the administrator shall immediately notify the Chief of BGS, who will work with the medical care provider to have a special medical guardian appointed or shall make such application itself as soon as possible.
- D. On a case-by-case basis, there may be a circumstance where the Chief, BGS, and the Deputy Attorney General determine that a general guardianship appointment can be processed expeditiously, instead of pursuing a special medical guardian. In this instance, the administrative head of the component shall provide required documentation to the Chief, BGS, or his or her designee.
1. A guardianship petition will be expedited on the basis of the medical, surgical, psychiatric or dental urgency.
 2. The usual elements of a BGS guardianship pleading will be prepared with the addition of an affidavit from the treating physician.
 - a. At the minimum, the affidavit shall provide the date of examination, the result of the examination, diagnosis, prognosis, medical, surgical, psychiatric or dental treatment indicated, and why the prompt rendering of medical, surgical, psychiatric or dental treatment is necessary.

Gregory Fenton
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