

Cathy Cooper

Authorized Signature

Number: SPD-PT-10-016
Issue Date: 6/2/2010

Topic: Developmental Disabilities

Transmitting (check the box that best applies):

- New Policy
 Policy Change
 Policy Clarification
 Executive Letter
 Administrative Rule
 Manual Update
 Other: _____

Applies to (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Children, Adults and Families | <input type="checkbox"/> Seniors and People with Disabilities |
| <input checked="" type="checkbox"/> County DD Program Managers | <input checked="" type="checkbox"/> Other (please specify): Executives of 24 hour residential services, DD Supported Living Providers DD AFHs, DD service coordinators, Brokerage Directors |

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|------------------------|-----------------|-------------|--|
| Policy/Rule Title: | Sterilization | | |
| Policy/Rule Number(s): | ORS chapter 436 | Release No: | |
| Effective Date: | Immediately | Expiration: | |
| References: | | | |
| Web Address: | | | |

Discussion/Interpretation:

SPD has been asked several times recently about the laws around sterilization of a person with a developmental disability and who can give consent. This transmittal is to remind CDDP and provider staff about who and how consent must be obtained.

The only person who can give consent to sterilization is the person (and only if older than 15 years of age) or through a court process (and only over the age of 18). Guardians, parents, powers-of-attorney, and Health Care Representatives can not give consent for someone else. The consent has to be given freely, without coercion and knowingly. Please see the appropriate statutes below. See ORS chapter 436 for more comprehensive requirements regarding sterilization.

Sterilization is a permanent procedure to stop reproduction, not a similar procedure to cure a diagnosed medical illness. Sterilization includes all Essure placements, tubal ligations, and vasectomies. It may include hysterectomy if the hysterectomy is performed with the intent to end reproduction or end normal menses. Hysterectomies that are done to correct a medical problem and would be completed regardless of the desire to reproduce later do not fall under this statute. If a CDDP has a question about the intent of a planned hysterectomy, the SPD Medical Director remains a resource in sorting out the issue.

Ability to give consent means the person understands the information given to them, understands the consequences of the decision, understands that this decision is permanent, and can communicate the decision. This consent needs to be given freely without undue pressure and should remain consistent. If a person changes their mind frequently, they should not undergo the procedure until they are sure.

Applicable statutes:

436.215 Legislative finding. The Legislative Assembly finds and declares that sterilization procedures are highly intrusive, generally irreversible and represent potentially permanent and highly significant consequences for individuals incapable of giving informed consent. The Legislative Assembly recognizes that certain legal safeguards are required to prevent indiscriminate and unnecessary sterilization of such individuals, and to assure equal access to desired medical procedures for these Oregon citizens.

436.225 Obtaining informed consent

(2) A natural parent, or a legal guardian or conservator of a minor child or protected person appointed under ORS chapter 125, may not give substitute consent for sterilization.

436.235 Petition to determine ability to give informed consent. A petition for a determination of a person's ability to give informed consent to a sterilization procedure may be filed by the person seeking sterilization, the attending physician of the person seeking sterilization, or by an interested person concerned with the respondent's health and well-being. Such a petition shall be filed in the circuit court in the county in which the respondent resides or has domicile.

436.295 Court determination of ability to consent

(2) If the court determines by clear and convincing evidence that the respondent lacks the ability to give informed consent for sterilization, the court shall retain its jurisdiction and continue the hearing to determine whether sterilization is in the best interests of the respondent.

Implementation/Transition Instructions:

If someone who qualifies for DD services or their family requests sterilization:

1. If there is any question of the person's ability to give consent, communicate this concern to the medical professional who will do the procedure. It may be helpful to involve the person's primary care provider to help with that communication.
2. If it is clear that the person can not give consent, communicate this to the medical professional. And if needed, consider proceeding with a court petition. Disability Rights Oregon (1-800-452-1694) should be contacted and can assist with the court process.
3. If there are two medical professionals who are not in agreement on the person's ability to consent, contact Disability Rights Oregon (1-800-452-1694) to request assistance with proceeding with a court petition.
4. If it appears that an illegal sterilization has occurred or you are unable to stop a planned procedure with the above steps, report the event to the local DD office as an allegation of abuse.

Training/Communication Plan: Share with all Service Providers, Personal Agents, Managers of Residential services, and anyone else who needs this information

Field/Stakeholder review: Yes No

If yes, reviewed by:

If you have any questions about this policy, contact:

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|--------------------|--|-------------|--------------|
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| E-mail: | Tina.c.kitchin@state.or.us | | |