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Director

State of California—Health and Human Services Agency
Department of Health Services



GRAY DAVIS
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TO: ALL INTERMEDIATE CARE FACILITY/DEVELOPMENTALLY DISABLED (ICF/DD)
ALL INTERMEDIATE CARE FACILITY/DEVELOPMENTALLY DISABLED-HABILITATIVE (ICF/DD-H)
ALL INTERMEDIATE CARE FACILITY/DEVELOPMENTALLY DISABLED – NURSING (ICF/DD-N)

SUBJECT: INFORMATION RELATED TO INFORMED CONSENT

Attached is information designed to give providers and surveyors a greater understanding of “informed consent” as it applies to people receiving services in Intermediate Care Facilities for the Mentally Retarded (ICF/MR). We understand that the Center for Medicare and Medicaid Services (CMS) is reviewing protections in the area of informed consent for unconserved adults with developmental disabilities, and will be issuing additional guidance in this area. We expect that the information included in the attached bulletin will be compatible with future federal guidance. If, however, there are differences, we will revise and reissue the bulletin at that time.

This bulletin identifies state laws applicable to informed consent for this population and describes actions a provider may take to be in better compliance with federal requirements in this area. It is educational in its intent, and does not establish new enforcement standards.

The following list highlights the key elements of this document. Please see the referenced pages for further discussion of these elements:

- Assessment – Individuals’ needs for representation should be assessed as part of the Comprehensive Functional Assessment (Pages 2, 3, 6, & 7).



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- Physician determination of capacity – This should be decision-specific, and may vary depending on the complexity of the decision and the level of risk involved (Pages 2 & 9). The inter-disciplinary team should have input into this determination (Pages 2, 6, & 7).
- Individual Program Plan –An individual's IPP should reflect their identified needs for representation, including needs for support, training, assistive devices, and/or surrogate decision-making (Pages 2, 3, & 8).
- Self-representation as the goal – Individuals should be supported and trained, to the fullest extent possible, to participate in the granting or withholding of consent (Pages 2 & 7).
- Legally sanctioned surrogate decision-maker – California law provides for a variety of arrangements for representation, including the use of closest available relative (Pages 3 - 5).
- Interagency responsibilities – The provider is responsible to proactively pursue representation for individuals with this identified need, by soliciting potential representatives both verbally and in writing. Providers should notify appropriate government agencies of this unmet need (Page 7 & 8). Cases where no authorized representative can be found should be referred to the Clients' Rights Advocate for legal review (Pages 11 & 12).

Should you have questions about this bulletin, please contact Jocelyn Montgomery, RN, Department of Health Services, Licensing and Certification, at (916) 552-9365, or e-mail her at jmontgo2@dhs.ca.gov.

Sincerely,

Original signed by

Brenda G. Klutz
Deputy Director
Licensing and Certification Program

Attachment