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Title Document: Obtaining Consent for Individuals Regarding Health Care - Making Health Care Decisions

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Applicability: DDSN Operated Community Settings, DDSN Regional Centers, DSN Boards, and Contracted Service Providers

PHILOSOPHY

People who are served by South Carolina Department of Disabilities and Special Needs (DDSN) are fully entitled to all the human and legal rights available to other citizens. The presence of a disability is not, in and of itself, a reason to assume the person is unable to consent.

POLICY

It is the policy of DDSN that health care decisions and advance directives be honored according to federal and state law. An Advance Directive gives guidelines about how health care is to be provided if or when an individual is physically or mentally unable to make decisions. A written Advance Directive may be a Living Will, Health Care Power of Attorney or other clear writing of an individual's wishes. Unless adjudicated incompetent, an adult can execute an Advance Directive.

It is the policy of DDSN that the South Carolina Adult Health Care Consent Act (The Act) be followed if an individual has no advance directive or cannot execute an Advance Directive that covers the specifically proposed health care decision. See S.C. Code Ann. § [44-66-10](#). The Act provides a process for making health care decisions for a patient who is unable to consent for their health care including those patients who are eligible for DDSN services under

the categories of Intellectual Disability/Related Disabilities (ID/RD), Head or Spinal Cord Injury (HASCI), Similar Disability, and Autism Spectrum Disorder (ASD).

IMPLEMENTATION OF POLICY

The following information is provided for implementation of the aforementioned policy. An attachment is included to provide information for individuals and their families regarding Advance Directives and the Act. (Attachment A: Your Right to Make Decisions About Your Health Care: Information for Individuals and Their Families)

I. Advance Directives

DDSN, a Disabilities and Special Needs (DSN) Board, or a DSN qualified provider who delivers residential services should take the following steps in regard to Advance Directives:

1. Provide Information

Each service provider delivering residential services shall develop policies and procedures to ensure that upon admission the adult being admitted will be provided with a written statement of the agency's policy regarding the implementation of Advance Directives, and also be provided with a written explanation of the law concerning Advance Directives. South Carolina provides by statute for two types of Advance Directives:

- **Living Will** - The Death with Dignity Act authorizes competent adults to express their wishes regarding the use or withholding of life-sustaining procedures, including artificial nutrition and hydration, in the event they are diagnosed with a terminal condition or are in a state of permanent unconsciousness and in the further event that they are incapacitated or otherwise unable to express their desires. The statute creates a form for this purpose entitled "[Declaration of a Desire for a Natural Death](#)." This document and those similar in purpose are commonly referred to as a "Living Will." See S.C. Code Ann. § [44-77-50](#).
- **Health Care Power of Attorney** - The South Carolina Probate Code authorizes competent adults to designate another person to make decisions on their behalf about their medical care in the event they become incapacitated. The statutory form created for this purpose is entitled "[Health Care Power of Attorney](#)" See S.C. Code Ann. § [62-5-504](#).

The individual's medical record maintained by the residential service provider shall be documented to reflect that the required information was provided.

2. Request Information

- Residential service providers' policies shall state that upon admission of an individual, staff will inquire into the existence of Advance Directives previously executed by the individual. The individual's medical record maintained by the residential service provider shall be documented as to the response to the inquiry.

- In the event staff are aware that an individual has executed an Advance Directive, they shall request a copy and maintain it in the individual's record. In the event of admission to a hospital or nursing facility, staff shall contact the hospital/nursing facility to make them aware of, and supply, a copy of the individual's Advance Directive if the individual's family does not do so.

Staff shall not serve as a witness to the declarant's signature if they are or have been directly involved in the individual's care. Staff shall not accept appointment as an agent in a Living Will or Health Care Power of Attorney.

II. Adult Health Care Consent

1. Steps To Take When In A Supportive Role

DDSN, Disability and Special Needs (DSN) Boards, and DDSN qualified providers are often not the health care provider, but have an important role in supporting individuals to access needed health care. To appropriately support individuals when obtaining health care, accurate information about who can give consent on behalf of the individual must be available.

In advance of an individual receiving health care, DDSN, DSN Boards, and DSN qualified residential service providers should complete the attached form (See Attachment B: Identification of Authorized Person Form) to identify for each individual the person in priority order to serve as the "authorized person" per The Act. See S.C. Code Ann. § [44-66-30](#). This form should be kept current at all times and at a minimum should be reviewed annually. Efforts to locate persons falling within the priority order must be documented. The order of priority is as follows:

- (1) A guardian appointed by the court;
- (2) An attorney-in-fact appointed by the patient in a durable power of attorney, if the decision is within the scope of his authority;
- (3) A spouse of the patient unless the spouse and the patient are separated pursuant to the statute; one;
- (4) An adult child or a majority of the adult children who are available for consultation;
- (5) A parent;
- (6) An adult sibling or a majority of the adult siblings who are available for consultation;
- (7) A grandparent of the patient or a majority of the grandparents who are reasonably available for consultation;
- (8) Any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or a majority of those other adult relatives who are reasonably available for consultation;
- (9) A person given authority to make health care decisions by another statutory provision; or
- (10) If, after good faith efforts, the hospital or other health care facility determines that the persons listed in items (1) through (9) are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes, but who is not a paid caregiver or a provider of health care services to the patient.

A copy of the completed form should be placed in the individual's record and taken to each health care appointment.

2. Steps To Take As the Authorized Person

When an individual is unable to consent, The Act provides an order of priority for authorized persons. DDSN is authorized to consent to or refuse major medical treatment “if a client resides in a facility operated by or contracted to by the department” (emphasis added). “Facility” is defined as “a residential setting operated, assisted, or contracted out by the department that provides twenty-four hour care and supervision”. S.C. Code Ann. § 44-26-10(7). DDSN can only act as the authorized person for individuals residing in settings meeting the definition of “facility.” S.C Code Ann. § [44-26-50](#), DOES NOT give the State Director of DDSN the authority to consent to health care treatment for those individuals with Head or Spinal Cord Injuries or Similar Disability. The State of Director of DDSN, designates the following individuals to act on his/her behalf:

- DDSN Regional Center Facility Administrators;
- Executive Directors of DSN Boards;
- Executive Director/Chief Executive Officer (CEO) of DDSN Contracted Service Providers.

State Director or designee shall take the following steps before providing health care consent:

1. Confirm that the individual has an Intellectual Disability/Related Disability to include Autism Spectrum Disorder.
2. Confirm that the individual with ID/RD was determined to have an inability to consent for a specific major medical treatment as defined as “a medical, surgical, or diagnostic intervention or procedure proposed for a person with an Intellectual Disability or a Related Disability, where a general anesthetic is used or which involves a significant invasion of bodily integrity requiring incision, producing substantial pain, discomfort, debilitation, or having a significant recovery period. It does not include routine diagnosis or treatment such as the administration of medications or nutrition or the extractions of bodily fluids for analysis or dental care performed with a local anesthetic or a nonpermanent procedure designed for the prevention of pregnancy. ” (See S.C. Code Ann. § [44-26-10](#) - Rights of Clients With Intellectual Disability.
3. Confirm that the physician has certified with one other physician that the individual has the inability to consent for the specific major medical treatment.

Each previous step should be documented in the individual's record to include the date of the request to consent, names of the two licensed physicians who certified the individual's inability to consent, specific major medical treatment for which consent was given.

3. Steps To Take As the Health Care Provider

DDSN and DDSN providers render health care when they deliver Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) services including admissions, placement, and discharge.

As a health care provider, when an ICF/IID resident is suspected to be unable to consent for admission to, placement in, or discharge from the ICF/IID then the health care provider must adhere to the requirements of the Adult Health Care Consent Act. Consent must be obtained at the time of admission to/placement in the ICF/IID and at the time of discharge from the ICF/IID.

When DDSN and DDSN providers are delivering ICF/IID services, the entity should take the following steps:

1. Have two licensed physicians certify that that the individual is unable to consent by completing the attached form (Attachment C: Physician Certification/Efforts to Location Form);
2. Identify the person who will act as at the “authorized person.” The “authorized person” must be selected from the statutory list of priorities as outlined by S.C. Code Ann. [§ 44-66-10](#) (the authorized person can be identified by referring to the individual’s “Identification of Authorized Person” Form);
3. Document efforts to locate persons falling within the priority order (See Attachment C: Physician Certification/Efforts to Locate Authorized Person Form); and
4. Authorized Person shall consent to the services to be delivered in the ICF/IID.

PLEASE NOTE THAT ALL EXECUTED FORMS SHOULD BE PLACED IN THE INDIVIDUAL’S RECORD

DocuSigned by:

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Barry D. Malphrus
Vice Chairman

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Gary C. Lemel
Chairman

To access the following attachments, please see the agency website page “Current Directives” at <https://ddsn.sc.gov/providers/ddsn-directives-standards-and-manuals/current-directives>

- Attachment A: Your Right to Make Decisions About Your Health Care: Information for Individuals and Their Families
Attachment B: Identification of Authorized Person Form
Attachment C: Physician Certification/Efforts to Locate Authorized Person Form