

 <b>Seniors and People with Disabilities</b>  <b>State Operated Community Program (SOCP)</b> <b>Policies and Procedures</b>	Supersedes: August 26, 2003	Policy Number: 3.007
	Effective Date: July 1, 2004	
	Approval Signature:	
Subject: Informed Consent		

**REFERENCE:**

OAR 309-041-0380 through 309-041-1610; 411-020-0020; 411-320-0060; 411-325-0300 (J); 411-325-0310; 411-325-0340; 411-325-0350; 411-325-0360; 411-325-0380  
 ORS 427.005; 163.427  
 SOCP Policy #3.001 (Behavior Intervention); 3.003 (Confidentiality of Records); 3.005 (Rights); 3.006 (Handling and Managing Individuals Money)

**BACKGROUND:**

SOCP serves individuals with developmental disabilities and co-existing disorders. Individuals have intellectual deficits that may diminish their capacity to exercise informed consent. They are, however, legally competent to exercise informed consent unless a court of law determines that the individual is “legally incapacitated”. Under ORS 427.005, "Incapacitated" means a person is unable, without assistance, to properly manage or take care of personal affairs or is incapable, without assistance, of self-care. The court will then appoint a legal guardian to assist the individual in exercising informed consent. When an individual does not have a guardian and there is a question regarding the individual’s ability to exercise informed consent (see “Informed Consent Criteria below), it is incumbent on the Individual Support Plan team (ISP team) to assist the individual in exercising informed consent. Treatment or individual care requiring informed consent include:

1. Behavioral support
2. Volunteerism
3. Paid Employment
4. Sexual Consent
5. Clinical Consent
6. Medical Consent
7. Financial Consent

**POLICY:**

All communication avenues will be utilized to insure that an individual or an individual’s guardian/legal representative be given informed consent to treatment and the waiving of any right. In addition, this program will follow the Informed Consent Criteria (below) when discussing issues relating to choice with an individual served by this program.

## **PRIVACY**

Services provided to individuals of this program are generally treated as private. This means that persons treating/caring for an individual should conform their professional conduct to applicable statutory/regulatory standards and program policies to insure they do not reveal an individual's identity, discuss information, or reveal the content of their communications with others. Privacy is a statutory protection as well as a professional relationship.

## **INFORMED CONSENT CRITERIA**

All ISP teams shall use the following criteria when assessing an individual's capacity to exercise informed consent:

1. The individual must have the capacity to understand the nature of the decision at hand or the proposed treatment.
2. The individual must have the capacity to understand whether there are reasonable alternatives to the decision at hand or proposed treatment.
3. The individual must have the capacity to understand the relevant risks, benefits, and uncertainties related to each alternative above.
4. The individual must have the capacity to understand their right to withdraw or withhold consent.
5. The individual must be able to communicate that understanding.
6. An individual is incapacitated when they have impaired or very limited ability to reason, remember, make choices, recognize the consequence of their actions or choices, and plan for the future.

For consent to be valid, it must be free from coercion/threats or other undue influences that are expressed or implied. The person must be given all the information necessary to make an informed decision including the benefits and risks of the issue at hand, e.g., a medical procedure, selecting a new place of employment/volunteerism, approving an ISP and Behavior Support Plan. The information must be conveyed in a manner so that it is understandable to the individual, e.g., in writing, orally, pictorially, sign language.

## **BEHAVIORAL SUPPORT**

All individuals or individuals with legally appointed guardians receiving comprehensive behavioral support would give informed consent in accordance with OAR 411-325-0060. All behavioral support will be designed and implemented in accordance with OAR 411-325-0340, 411-325-0350, 411-325-0360 and SOCP Policy #3.001. An individual's psychiatric status, medications, or disability may influence his or her ability to understand the decision at hand at a given point in time. A psychiatric consultation may be necessary to determine whether an individual has the capacity to give informed consent.

## **VOLUNTEERISM**

A condition of participating in a volunteer activity may require that the individual agree to disclose sensitive and confidential information about their psychiatric status, past history, or current behavioral supports. The individual should be counseled about the

type of information requested, the ramification of disclosing this information, their right to withhold this information and the probable consequence of same. All volunteering shall be done with an established and recognized organization. The individual will be informed about the nature of volunteering their time and that they are consenting to provide a service or function without monetary compensation.

## **PAID EMPLOYMENT**

If the individual engages in paid employment to perform work or services, the ISP team will ensure that the individual understands the nature and terms of the employment and whether disclosure of personal information is required.

## **SEXUAL CONSENT**

This program recognizes the individual's right to an expression of sexuality, to marry, and to have children OAR 411-325-0300 (J). The United States Supreme Court has interpreted the Constitution to mean that a fundamental, general "right to privacy" exists within the Bill of Rights, and that this right protects individual choice on issues of family, contraception, procreation, and marriage (Griswold v. Connecticut, 1965; Eisenstadt v. Baird, 1972; Roe v. Wade, 1973; Carey v. Population Services Int., 1977). In Oregon, it is a felony to engage in sexual intercourse with a person under sixteen, or to engage in sexual penetration or sexual contact with a person under fourteen, ORS 163.427 (enacted 1991). It is therefore necessary for both parties to be at least 14 years of age to consent to sexual contact and at least 16 to consent to sexual intercourse.

An individual's ability to understand the complexity of an intimate relationship may influence their ability to give and receive sexual consent. Activities such as sexual petting, sexual stimulation/fondling, and sexual intercourse require complex judgment skills and a full understanding of the potential consequences including communicable disease, impregnation, emotional attachment, or interpersonal conflict. These activities may require a continuous process of giving/receiving consent through completion of the activity where consent may be withdrawn at any point during the activity.

Individuals residing in this program who wish to cultivate intimate and sexual relationships shall be counseled and/or assessed by the SOCP Clinical Services Manager or designee regarding issues of human sexuality (Sexuality Assessment Tool available from Clinical Services Manager). Individuals on parole or probation for committing sexually offensive behavior wishing to cultivate a sexual relationship will act in accordance with their conditional release guidelines.

Within the parameters of applicable behavioral support guidelines, it may be preferable to arrange an off-site sexual liaison for an individual who resides in a group home where other individuals may be negatively impacted. This program does not support or condone sexual contact between caregiver (staff, administration, or contracted professionals) and an individual residing in and receiving care in a group home.

## **CLINICAL CONSENT**

An individual or legally appointed guardian gives consent to clinical treatment within the SOCP program by signing and understanding the Individual Support Plan (ISP) developed by the ISP team in accordance with SOCP Policy #3.005. All clinical records are kept confidential in accordance with OAR 411-325-0310 and SOCP Policy #3.003, #3.004. As well, the Health Insurance Portability and Accountability Act (HIPAA) protects all confidential health information from being shared without consent from the individual.

There are circumstances where the individual's confidentiality and consent to release clinical information may be waived:

1. A therapist or caregiver may be subpoenaed and ordered to testify in a court of law and objections citing confidentiality may be overruled.
2. If a therapist or caregiver believes that abuse or harm has been done to a child, disabled person, or to an elderly person, they are mandated to report this information to proper authorities under abuse reporting law [OAR 411-020-0020].
3. If a therapist or caregiver believes an individual is dangerous to himself or herself, or another person, and it may become necessary to take steps to protect that individual or the safety of others. They may only release information that is necessary to protect or insure the individual's health and safety.
4. If during a medical emergency a therapist or caregiver needs to reveal information that is necessary to protect or insure the individual's health and safety.

## **MEDICAL CONSENT**

Medical records kept on-site may contain information about diagnoses and medications, medical history, HIV and/or communicable disease status and shall be kept in accordance with SOCP Policy #3.004. In the event of a medical emergency, Title 28 of the Code of Federal Regulations, Part 22 states "patient identifying information may be disclosed to medical persons who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical attention."

HIPAA sets limits on how health plans and covered providers may use individually identifiable health information. To promote the best quality care for patients, the rule does not restrict the ability of doctors, nurses and other providers to share information needed to treat their patients. In other situations, though, personal health information generally may not be used for purposes not related to health care, and covered entities may use or share only the minimum amount of protected information needed for a particular purpose. In addition, patients would have to sign a specific authorization before a covered entity could release their medical information to a life insurer, a bank, a marketing firm or another outside business for purposes not related to their health care.

The individual will be asked to give their consent to any medical procedure requiring written consent per the guidelines set forth by the medical professional and/or medical facility providing the medical procedure. If the ISP team determines that the individual does not have the capacity to exercise informed consent per the above criteria, arrangements may be made to appoint a Health Care Representative under OAR 309-041-0380 through 309-041-1610.

## **FINANCIAL CONSENT**

Individuals shall be encouraged to independently manage their own money. When an individual requires assistance to manage their funds due to severe physical or mental limitations, the Social Security Administration appoints an “interested party” to serve as the beneficiary’s “Representative Payee”. The program shall be responsible for the accurate preparation and maintenance of al written record for each individual of earned income money received or disbursed on behalf of or by the individual as described in OAR 411-325-0380 and SOCP Policy #3.00