

(8) Informed consent committee.

(i) This committee (see subdivision (b) of this section) need not be a “standing” committee. It may be a committee convened on an as-needed basis for the purpose of reviewing a request(s) for informed consent when the individual lacks capacity to give informed consent and there is no authorized surrogate reasonably available and willing.

(ii) Agencies shall arrange for the creation of an informed consent committee or may coordinate with other agencies in the creation of a shared informed consent committee.

(iii) Informed consent committee membership shall:

(a) consist of a minimum of three members;

(b) include at least one member having no ownership, employment relationship or other interest in the agency that would result in a real or perceived conflict of interest; or

(c) include at least one person who does not serve on the behavior plan/human rights committee which reviewed the behavior support plan; or

(d) include at least one professional holding a license or certification appropriate to their discipline, and who has specialized training or at least one year of professional experience in treating or working with people with developmental disabilities (see specific qualifications for each discipline under “professional, qualified” in section 690.99 of this Title); and

(e) not include anyone who is involved in the delivery of services to the person whose service plan is under review; and

(f) include an individual with developmental disabilities, a guardian or family member of an individual with developmental disabilities, an advocate, or a party with experience in the field of developmental disabilities.

(iv) The Mental Hygiene Legal Service (MHLS) may represent, before this committee, the interests of persons who are residents of a facility operated or certified by OPWDD, and shall be notified of any informed consent committee meetings involving such individuals who lack capacity.

(v) The committee shall reach its decision within 15 business days of receiving an application for informed consent.

(vi) The committee's decision shall be by majority vote and shall be provided without delay to the person, the person's program planning team and other relevant parties.

(h) Objections.

(1) Any objection to a person's proposed behavior support plan or a proposed revision of a current plan (except those relating to restrictive/intrusive interventions), must be made in accordance with the process that is outlined in section 633.12 of this Part.

(2) Lack of informed consent.

(i) "Lack of informed consent" is considered to be:

(a) the withdrawal of a previously stated informed consent by the consent giver; or

(b) the refusal of the consent giver to provide informed consent.