

The Rehab Group Consent (IRE)

Applies Jurisdiction: IRELAND ONLY

Division: ALL

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Date: July 2017

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Date: August 2017
Signature: 

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1.0 POLICY STATEMENT

The rationale behind the importance of consent is the need to respect the right to self-determination or autonomy (the right to control your own life) of all people who use our services. Rehab Group obtains consent from the people who use our services before providing supports, services and interventions. This policy outlines how and when Rehab Group obtains consent from the people who use our services. It also describes a process to be followed when gaining informed consent is not possible due to the potential lack of or impaired capacity.

This policy must be read in conjunction with the National Consent Policy and The National Consent Guide for Health & Social Care Professionals.

- [National Consent Policy](#)
- [Consent: A guide for health and social care professionals](#)

2.0 PURPOSE

The purpose of this policy is to make sure that we put practices in place to promote and uphold the rights of all people in our services. A fundamental human right afforded to our service users is the right to consent to and refuse services/treatments/interventions (this right is enshrined in the Irish Constitution as well as international human rights law, such as 1948 declaration of human rights). The need for consent, and the application of the general principles in this policy, extends to all supports/services/interventions provided to all service users in all locations.

3.0 SCOPE

This policy applies to all staff and volunteers who work for the Rehab Group.

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4.0 DEFINITIONS

- 4.1** Consent is demonstrated when an individual (either verbally or non-verbally) indicates what they are willing to do or allow a third party to do to, or for them.
- 4.2** Informed consent is consent given after the process of explaining a course of treatment, provision of a service, intervention or care task has occurred. This explanation must outline the risks, benefits and possible alternatives and the process by which service users agree.
- 4.3** In order for consent to be deemed valid, informed and genuine, there are five criteria that must be met.

Namely:

- Voluntariness-without any element of duress
- The provision of sufficient information
- Understanding
- Competence (the person has capacity to consent to the care task or intervention etc.)
- The accurate recording of the individual's decision

4.4 Capacity to consent

Irish law presumes that every adult has the capacity to make his or her own decisions when they have the choice, the necessary tools (e.g. time and information) and understanding of the consequences of any decision (every adult has the right to make unwise decisions). This presumption applies to every adult unless it can be established that there is a doubt as to the adult's ability to make informed decisions. A person cannot lack capacity as a decision maker *per se*. A person may lack capacity to make a particular decision at a particular time. (Assisted Decision-Making Capacity) Act 2015.

www.oireachtas.ie/documents/bills28/acts/2015/a6415.pdf

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4.5 Best Interests Principle definition.

The best interests' principle states that any act done or decision made on behalf of an adult lacking capacity must be in their best interests. This can cover financial, health and social care decisions. The person making the decision is the "decision-maker" and is likely to be the person caring for the service user/learner on a day-to day basis, the doctor or other member of the healthcare staff responsible for carrying out the particular intervention. (Mental Capacity Act 2005-UK). *The Best Interests Test is outlined in appendix 1.*

5.0 GENERAL PROVISIONS / PROCEDURE

People who use our services may indicate consent orally, in writing (through sign language or braille) or in certain limited circumstances by implication (e.g. the person using our services opens their mouth to receive food). It must always be established that the service user/ learner has understood and received information as to why consent is being sought.

5.1 When and How to Gain Consent.

Consent should be regarded as a process of communication that begins with the initial contact and continues through to the end of the individual's involvement in the provision of services. Rehab Group obtains consent from people who use our services before providing services and throughout the provision of services. How the principles are applied, such as the amount of information provided and the degree of discussion needed to obtain valid consent, will vary with the particular situation.

Consent may be sought in a number of different ways;

- Formal request ("Do I have your consent?")
- Informal request ("Can I come in?")
- Implied (Participation in a Programme)

(this is not an exhaustive list)

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5.2 Establishing Consent

The member of staff carrying out the care task/intervention shall establish if the service user/ learner has the capacity to consent. The starting point must always be to assume that a person has the capacity to make a specific decision. Some people need help to communicate a decision but this does not mean that they lack the capacity to do so. If it is believed that a service user/ learner lacks capacity to consent to a particular course of action, it is necessary to demonstrate this lack of capacity before a decision is made to proceed without consent. An additional evaluation from the medical team may be required if the service user's capacity status is uncertain. In this instance a referral to the GP/primary care team might be required.

5.3 Reduced Capacity

If the person using our services does not have the capacity to consent Rehab Group will act using the best interests' principle, previous indicated preferences, consultation with family members and others. No other person such as a family member or carer can give or refuse consent on behalf of an adult unless they have formal legal authority to do so; however it may be appropriate in some circumstances to include family members in the discussion and decision-making process. If the service user/ learner is believed to have reduced or no capacity this will be recorded and the line manager will be informed.

5.1 Persons with full capacity

If the service user/ learner has the capacity consent will be obtained and recorded.

5.2 Refusal to consent

If consent is not received the intervention/task shall not be carried out, the reason recorded and line manager informed. If the decision to refuse consent is voluntary, appropriately informed and the person has capacity then it must be respected

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(even if the person looking for consent believes it is in the best interests of the person or could result in negative consequences for the person).

5.3 Timeframes and review of consent

Consent can be given in general terms (to a programme or activities) but for individual interventions/tasks/treatments the consent is only valid for the life of that intervention. Consent should be sought each time a new intervention/task/treatment is required. The people using our services have the right to review this consent and withdraw consent at any time (the right to change one's mind is a fundamental right). Even if consent has been given for a previous task the service user/ learner can withdraw consent at any future point.

5.4 Recording Consent

Consent can be recorded in a number of different ways;

- Signed Consent form (if a consent form is used and the service user/ learner is unable to write, a mark on the form to indicate consent is sufficient. This should be witnessed by a person not seeking the consent, to indicate that the service user/learner wishes to record in this way)
- Documentation of interactions/previous decision making
- Record of task being complete
- Participation record

(this is not an exhaustive list)

5.5 Exceptions

There are some situations where staff must proceed even without the consent of the person using our services.

- Where a safeguarding issue arises for an adult, or child, the incident must be reported even without the consent of the service user.

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- When a vulnerable adult is at serious or immediate risk.
- When another person or persons are at serious risk, either from themselves or others. This includes children.
- Rehab Group has a duty to report allegations of serious abuse to An Garda Síochána, when it is suspected a crime has been committed. This would include for example, but not limited to - physical assault, sexual assault, financial abuse and cases where there is ongoing risk of injury.
- In addition Rehab Group has a duty to notify the Gardaí if they directly witness any criminal acts occurring. If An Garda Síochána are notified without the consent of the vulnerable adult:
 - (i) Staff should inform the vulnerable adult that they have a duty to report the allegation to An Garda Síochána against their expressed wishes.
 - (ii) Staff should inform An Garda Síochána on notification that they are reporting the alleged serious assault or crime against the vulnerable person's wishes.
 - (iii) Every effort must be made to support the vulnerable adult throughout the process, and should be done in a manner appropriate to the risks posed to the vulnerable adult or to others.

Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012

<http://www.irishstatutebook.ie/eli/2012/act/24/enacted/en/html>

6 .0 ROLES & RESPONSILBITIES

6.1 It is the responsibility of **all staff** to :

- Communicate to service users/ learners in a polite manner using language that the service users/ learners understand and to obtain consent prior to interventions.
- Read and implement this policy.
- Seek and attend training in relation to this policy (where applicable).

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6.2 It is the responsibility of **line managers** to:

- Implement this policy.
- Provide education/ training to staff and monitoring of compliance in obtaining informed consent.

7.0 EVALUATION & AUDIT

7.1 There will be quarterly reviews of the efficacy of this policy and how widely it is used. Managers will be responsible for collating staff feedback.

7.2. This policy will be reviewed on a 3 yearly cycle, unless legislation changes or internal structures within Rehab Group require/ demand otherwise. In that case this policy will be reviewed and updated before the end of that cycle. This policy is next due for review in June 2020.

8.0 REFERENCES

Assisted Decision-Making (Capacity) Act 2015.

National Consent Policy.

The National Consent Guide for Health & Social Care Professionals.

The Irish Constitution 1937 (Bunreacht na hÉireann).

The Universal Declaration of Human Rights (UDHR) 1948.

The UN Convention on the rights of Persons with Disabilities 2006.

Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012.

Mental Capacity Act 2005 (UK).

8.1 Related PPPGs

Safeguarding Vulnerable Adults Policy

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9.0 APPENDICES

Appendix 1 – List of Reviewers

Appendix 2 – Read & Understood

Appendix 1 – List of Reviewers

Authors List for New/ Reviewed Policy Area

The following names individual authors/ reviewers to this policy are:

Division/Other	Name(s)
Quality & Governance	Seamus Dillon
RehabCare	Alison Steeds
NLN	Karen Caulwell
RehabCare	Darragh O'Regan

*Note that it is not obligatory for each division to be involved in a new policy/ review if the policy is not relevant; this should be decided by each division on a case-by-case basis.

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Appendix 2 – Read & Understood

I have read, understand and agree to adhere to the Consent IRE attached Policy, Procedure, Protocol/ SOP or Guideline:

Print Name	Signature	Date

