



COMMISSIONER
Adelaide Horn

December 14, 2007

To: Home and Community Support Services Agencies (HCSSAs)

Subject: Provider Letter #07-22 – Medical Treatment Consent Requirements

Effective: September 1, 2007

HCSSAs are required to have consent to treat clients as stated in Texas Administrative Code (TAC) §97.292 (a)(3) "Agency and Client Agreement and Disclosure". The purpose of this letter is to notify HCSSAs that, effective September 1, 2007, there is another method to obtain medical consent that a HCSSA may use if appropriate for its clients and circumstances, this in no way removes the need to obtain a written agreement for services as outlined in TAC §97.292. The 80th Legislature amended the Consent to Medical Treatment Act, Health and Safety Code Chapter 313, to include adult clients of HCSSAs. The following questions and answers are to assist a HCSSA to identify how these changes will affect its agency.

What type of client and which licensure categories does this statute apply to?

The statute applies to any adult client who is comatose, incapacitated, or otherwise mentally or physically incapable of communication and needs consent for medical treatment. The only licensure category that this statute does not apply to is Personal Assistance Services (PAS) because PAS is a non-medical model of home health services. All other licensure categories may follow this statute.

What is the responsibility of the HCSSA when a client is in need of medical treatment and is unable to make the decisions regarding medical treatment because he/she is comatose, incapacitated, or mentally or physically incapable of communicating?

The HCSSA communicates with an adult surrogate who may speak for the client during this time. The adult surrogate may be one of the following, "in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient":

- "the client's spouse,
- an adult child who has the consent of all other adult children to act as sole decision-maker,
- a majority of reasonably available adult children,
- the client's parents,
- an individual who has been clearly identified to act for the client prior to becoming incapacitated,
- the client's nearest living relative, or
- a member of the clergy".¹

¹ Consent to Medical Treatment Act, Health and Safety Code Chapter 313.004(a)

When a surrogate decision-maker is not available, what must the HCSSA do?

The HCSSA must obtain documentation demonstrating that the attending physician made a reasonably diligent effort to contact the persons eligible to serve as surrogate decision-makers and must keep this documentation in its clinical record for the client. If the surrogate decision-maker gives consent by phone, the agency must reduce the consent to writing, sign and obtain a counter-signature from the surrogate decision-maker as soon as possible. The HCSSA must keep the consent in the client's clinical record.

What must the HCSSA ask the attending physician to do in order for the agency to care for an incapacitated client?

The HCSSA must ask the physician for documentation describing the comatose state, incapacitated state, or mental or physical inability and the proposed medical treatment and must then include this documentation in the clinical record.

Please contact a HCSSA policy specialist at (512) 438-3161 if you need additional information or have specific questions.

Sincerely,

[signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

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