

## **1. Informed Consent Policy**

### **1.1 Purpose.**

The purpose of this policy is to ensure that consumers are able to provide informed consent when they use the services of 360 Health and Community Services (360) by providing them with appropriate information that is easy to understand.

### **1.3 Policy Statement**

Informed consent is a fundamental right that must be available to all people accessing 360's services.

360 will ensure that all consumers exercise informed consent and are supported to maximise their choice and self-determination when accessing 360 services and that staff obtain informed consent before collecting information, disclosing personal information, or providing services.

To achieve informed consent, our staff and contractors will ensure the person giving informed consent understands:

- providing consent is a voluntary process and that they can freely make decisions without unfair influence from others;
- how the person's consent is utilised by 360 and limitations on its use;
- the services that 360 provides;
- conditions for accessing 360's services, including client rights and responsibilities;
- the benefits and risks associated with services that are proposed to be provided;
- how personal information is managed by 360 and how service delivery may be impacted if the consumer is unwilling to provide certain information;
- the extent and limits of client confidentiality;
- the right to change and withdraw consent at any time;
- the consequences of withdrawing consent;
- that they can have time to decide if they need it.

360 will ensure that where appropriate and practicable, the involvement of carers, other service providers, and others nominated by the consumer, occurs in accordance with the consumer's wishes.

Where a consumer has diminished capacity to provide informed consent, 360 will ensure appropriate processes are in place to assist the consumer in accordance with relevant legislation and best practice.

## **2. Procedure**

### **2.1 Ensuring informed consent is valid**

The aim of informed consent is to ensure that the consumer understands the health care or service they are to receive and that they have enough information to make an informed decision whether to proceed with the service or not. Therefore, it is important to ensure that communication is clear, and readily understood by the consumer.

To ensure that consent is valid, the process for achieving consent needs to be comprehensive. 360 has adopted the following principles of validity <sup>1</sup>:

360 staff and contractors are required to ensure that the consent provided by consumers is valid by ensuring:

- the consumer has the capacity (ability) to decide about the specific issue at the specific time, and is not affected by therapeutic or other drugs, or alcohol;
- the consent is voluntarily given, and free from manipulation by, or undue influence from, family, medical staff or other social coercive influences;
- the discussion between the consumer and the health practitioner/service provider is transparent, well balanced, and involves two-way communication which is sensitive to the situation;
- the consumer is able to clearly understand the information because it is provided in a language or by other means the consumer can understand;
- the consumer has sufficient time to consider and clarify information in order to make an informed decision, taking into account the context of the care situation. (Note: A demonstrated significant risk to self or others may override the opportunity to give additional time for decision making and where the person is demonstrating a diminished capacity to provide informed consent).
- the information provided and the consent given relate to the specific care provided.

The amount of information and time required to implement the consent process will need to be determined on an individual basis as the complexity and individual characteristics of each case varies considerably.

360 staff are to assist wherever possible when a consumer indicates, or staff identify the need for support assistance, for example, support of a carer, family or friend, the need for an interpreter, support from a person of Aboriginal or Torres Strait Islander descent, issues related to cultural background and methods of conveying information, e.g. diagrams, audio visual etc.

Staff must always use plain, non-technical language to communicate information about proposed care and processes, endeavour to establish that the consumer has understood the information provided and provide an opportunity for the consumer to ask questions.

## **2.2 Documenting consent**

Staff and contractors are required to obtain written consent at the commencement of treatment or care. 360 has consent forms which, at a minimum, address consent to care and consent to gather and share information.

Not every element of care requires written consent. For example, verbal and or implied consent (e.g. where a patient presents for a blood test and offers their arm for the extraction of a blood sample) is acceptable where treatment or care carries no significant risks to the consumer.

Regardless of the form of consent, details are to be kept on the consumer's file (copy of signed consent form (where relevant) or notation in the consumer's notes and/or electronic record). Any supplementary measures taken to assist the consent process e.g. support by a carer, interpreter etc should also be noted.

## **2.3 Consumers who lack capacity to provide consent.**

The general assumption is that an adult consumer has the capacity to provide informed consent except when it can be shown they lack capacity.

Some clients have an enduring power of attorney, enduring power of guardianship, or an administration order through the State Administrative Tribunal. Staff must ask clients, on entry to a service, if this is the case.

If a power of attorney or guardianship or administration order are identified, consent forms are required to be completed by the nominated guardian.

Consent forms signed by clients on a Guardianship Order are not considered legal documents because the individual has been assessed as incapable of providing informed consent.

Where there is doubt about a person's capacity, and there is nothing in the person's medical or care records that indicates a lack of capacity, the person's general practitioner will need to perform an assessment, potentially in consultation with a geriatrician, psychiatrist or neurologist.

## **2.4 Consent process for persons under the age of 18 years.**

2.4.1 The appropriate person to provide consent regarding a minor (a person whose age is less than 18 years), accessing the services at 360 are the parents or duly appointed guardian. However, the power of parents and guardians to consent to treatment is limited by an overriding concept of what is in the child's best interest.

A minor can consent to accessing treatment/support without parental permission if they have been assessed as having the intelligence and emotional maturity to know what is being proposed (the concept of the mature minor) and the possible consequences of it.

2.4.2 The Mature Minor Tool has been designed for use by 360 clinicians and it is to be used to guide assessment and planning regarding a young person's ability to provide informed consent and restrict parental/guardian involvement.

The Process and outcome of a mature minor assessment (also known as Gillick Competency assessment) must be clearly documented in the young person's MasterCare or Best Practice file.

360 strongly advocates for the involvement of the parents/guardians of any young person engaged with 360. Where the young person under 16 years of age is seeking treatment and refusing the involvement of parents/guardians, the mature minor principles will be used to determine if 360 can offer support.

2.4.3 When assessing a child of young person's capacity, the following issues should be considered <sup>ii</sup>:

- the age, attitude and maturity of the child or young person, including their physical and emotional development;
- the child or young person's level of intelligence and education;
- the child or young person's social circumstances and social history;
- the nature of the child or young person's condition;
- the complexity of the proposed health care, including the need for follow up or supervision after the health care;
- the seriousness of the risks associated with the health care;
- the consequences if the child or young person does not have the health care;

- where the consequences of receiving the health care include death or permanent disability, that the child or young person understands the permanence of death or disability and the profound nature of the decision he or she is making.

The more complex the health care or more serious the consequences, the stronger the evidence of the child or young person's capacity to consent to the specific health care will need to be.

The health practitioner documents fully in the consumer's clinical record the assessment they have carried out, including the details which influenced their decision as to whether the child has capacity.

Maturity and intellectual development varies from one individual to another and an assessment of a child or young person's capacity is performed for each new health care decision. However, as a practical rule of thumb:

- a young person aged between 16 and 18 is most likely able to consent
- a young person aged between 14 and 16 is reasonably likely to be able consent
- a child under the age of 14 may not have the capacity to consent, except for health care that does not carry significant risk <sup>iii</sup>.

## 2.5 Advance Health Directives

A person can make an Advance Health Directive (AHD) in which they make decisions about future health care and can provide or withhold consent to treatment/care. An AHD only comes into effect if a consumer has lost capacity. Mental health legislation can override an AHD, for example in relation to situations relating to involuntary treatment of where the request conflicts with applicable laws. 360 staff should enquire as to the existence of an AHD when a person is initially assessed for treatment or care.

Further information about AHDs is available at:

<http://www.health.wa.gov.au/advancehealthdirective/home/index.cfm>.

## 3. Policy linkages.

National Standards for Mental Health Services 2010, National Standards for Disability Services, QIC Health and Community Services Standards (QIP), Commonwealth Privacy Act 1988 – amended in Privacy Amendment (Enhancing Privacy Protection) Act 2012, Australian Privacy Principles 2014, Commonwealth Freedom of Information Act 1982, West Australian, Freedom of Information Act 1992, 360 Privacy Policy, 360 Confidentiality Policy, 360 consent forms.

Kerridge, I, Lowe, I and McPhee, J, Ethics and law for the health professions, (2005), 2<sup>nd</sup> edition, The Federation Press, Sydney pp 215 to 236 in Guide to informed decision making in health care, 2<sup>nd</sup> edition, Patient Safety and Quality Improvement Service, Queensland Health, 2017.

<sup>1</sup> Consent to Treatment of Children Circular from the Chief Health Officer Issue No 23 December 2006 in Guide to informed decision making in health care, 2<sup>nd</sup> edition, Patient Safety and Quality Improvement Service, Queensland Health, 2017

<sup>1</sup> Consent for Treatment and Confidentiality in Young People, September 2004, the former Medical Practitioners Board of Victoria pp1 to 6, in Guide to informed decision making in health care, 2<sup>nd</sup> edition, Patient Safety and Quality Improvement Service, Queensland Health, 2017.

**4. Review.**

<b>Informed Consent Policy Endorsement</b>			
<b>Frequency</b>	<b>Responsibility</b>	<b>Ratified</b>	<b>Next Review</b>
3 yearly	Executive Manager Clinical Development		April 2022

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