

## OBTAINING CONSENT/AUTHORITY TO CONSENT

Revised 06-25-02

### **Obtaining Consent/ Authority to Consent**

Before an individual signs the consent form, the agency must explain to the individual whether the release of data is legally required or necessary for receiving services and what the consequences are of giving informed consent.

A consent for release of information must not be forced. The agency may not pressure, threaten, cajole, or mislead an individual into giving consent.

### **Minors (See manual section on [Minors](#))**

In most circumstances, parents or guardians sign consent forms for a minor child but sometimes, the minor may sign consent forms or refuse consent to disclose information, as for example, in the case of chemical dependency data. See [Minnesota Rules, part 1205.0500, subpart 2A](#); See **Also** manual section on [Chemical Dependency](#) Sometimes the minor's, not the parent's, consent is required to disclose information, for example, when the minor is emancipated.

Minors' signatures on release forms should only be requested when:

- State or federal law provides that a minor may obtain services without the consent of the parent or guardian; or
- The minor is emancipated; or
- The minor has requested that certain data be withheld from the parent.

Note, however, the parent must still sign for release of any other information which the minor has not withheld from the parent.

Entities should assume that both parents have access rights to data about the minor and authority to sign consents for the minor, even if the parents are divorced or separated, unless the agency is given court documents specifying otherwise. If parental rights are terminated, access and consent rights are also terminated.

### **Pers ons With Developmental Disabilities Or A Related Condition**

Adults with developmental disabilities or a related condition are generally deemed to have sufficient mental capacity to sign releases for information. So long as they do not have a guardian, they may themselves sign consents for release of information.

### **Others Who May Consent**

When parents or guardians are absent, a person acting as parent or guardian, e.g., stepparent, foster parent, social worker, or adult child. [Minn. Stat. § 13.02, subd. 8](#) But **Note:** It is difficult to tell whether a parent or guardian is really absent, therefore, whenever possible try to get consent of the actual parent or guardian.

For state wards, the public guardian, legal representative, or conservator. When in doubt, seek copy of the order and clarification from the agency attorney.

### **Consent For Confidential Information**

Data subject generally cannot authorize the release of confidential information. Confidential information is accessible only to those agencies who are authorized by state or federal law to have access ([Minn. Rules, part 1205.0600, subp. 2B](#)) or to persons as mandated in a court order.

The identity of the reporter of child abuse or vulnerable adult abuse is confidential and cannot be released to the alleged perpetrator or victim, but the reporter may consent to release of this information to the alleged perpetrator or victim.

**Duration of Release**

The effective time period for release can be less than one year ([Minn. Stat. § 13.05, subd. 4\(d\)\(7\)](#)) but, except in insurance cases, cannot exceed one year. For life insurance or noncancelable or guaranteed renewable health insurance identified as such, the expiration date is two years after the date of the policy. The duration period for Medical Assistance under [chapter 256B](#) or MinnesotaCare under [chapter 256L](#) are ongoing during all terms of eligibility, for individual education plan health-related services provided by a school district under [section 125A.21, subdivision 2](#). ([Minn. Stat. §13.05, sub 4](#)) Chemical dependency regulations require that the release have a specific expiration date or a condition upon which the release will expire.

**Revocation of Release Form**

The individual may revoke the consent at any time so long as the release of information has not yet taken place.