

the care and treatment of mental illness, or (2) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

Mentally incompetent individual means an individual who has been declared mentally incompetent by a Federal, State, or local court of competent jurisdiction for any purpose unless he or she has been declared competent for purposes which include the ability to consent to sterilization.

Public Health Service means the Office of the Assistant Secretary for Health, Health Resources and Services Administration, National Institutes of Health, Centers for Disease Control, Alcohol, Drug Abuse and Mental Health Administration and all of their constituent agencies.

The *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Sterilization means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

[43 FR 52165, Nov. 8, 1978, as amended at 49 FR 38109, Sept. 27, 1984]

§ 50.203 Sterilization of a mentally competent individual aged 21 or older.

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of an individual only if the following requirements have been met:

(a) The individual is at least 21 years old at the time consent is obtained.

(b) The individual is not a mentally incompetent individual.

(c) The individual has voluntarily given his or her informed consent in accordance with the procedures of § 50.204 of this subpart.

(d) At least 30 days but not more than 180 days have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of premature delivery or emergency abdominal surgery, if at least 72 hours

have passed after he or she gave informed consent to sterilization. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

§ 50.204 Informed consent requirement.

Informed consent does not exist unless a consent form is completed voluntarily and in accordance with all the requirements of this section and § 50.205 of this subpart.

(a) A person who obtains informed consent for a sterilization procedure must offer to answer any questions the individual to be sterilized may have concerning the procedure, provide a copy of the consent form, and provide orally all of the following information or advice to the individual who is to be sterilized:

(1) Advice that the individual is free to withhold or withdraw consent to the procedure any time before the sterilization without affecting his or her right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled;

(2) A description of available alternative methods of family planning and birth control;

(3) Advice that the sterilization procedure is considered to be irreversible;

(4) A thorough explanation of the specific sterilization procedure to be performed;

(5) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;

(6) A full description of the benefits or advantages that may be expected as a result of the sterilization; and

(7) Advice that the sterilization will not be performed for at least 30 days except under the circumstances specified in § 50.203(d) of this subpart.

(b) An interpreter must be provided to assist the individual to be sterilized if he or she does not understand the language used on the consent form or the language used by the person obtaining the consent.

§ 50.205

42 CFR Ch. I (10–1–10 Edition)

(c) Suitable arrangements must be made to insure that the information specified in paragraph (a) of this section is effectively communicated to any individual to be sterilized who is blind, deaf or otherwise handicapped.

(d) A witness chosen by the individual to be sterilized may be present when consent is obtained.

(e) Informed consent may not be obtained while the individual to be sterilized is:

- (1) In labor or childbirth;
- (2) Seeking to obtain or obtaining an abortion; or
- (3) Under the influence of alcohol or other substances that affect the individual's state of awareness.

(f) Any requirement of State and local law for obtaining consent, except one of spousal consent, must be followed.

§ 50.205 Consent form requirements.

(a) *Required consent form.* The consent form appended to this subpart or another consent form approved by the Secretary must be used.

(b) *Required signatures.* The consent form must be signed and dated by:

- (1) The individual to be sterilized; and
- (2) The interpreter, if one is provided; and
- (3) The person who obtains the consent; and
- (4) The physician who will perform the sterilization procedure.

(c) *Required certifications.* (1) The person obtaining the consent must certify by signing the consent form that:

(i) Before the individual to be sterilized signed the consent form, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized,

(ii) He or she explained orally the requirements for informed consent as set forth on the consent form, and

(iii) To the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(2) The physician performing the sterilization must certify by signing the consent form, that:

(i) Shortly before the performance of the sterilization, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized,

(ii) He or she explained orally the requirements for informed consent as set forth on the consent form, and

(iii) To the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized. Except in the case of premature delivery or emergency abdominal surgery, the physician must further certify that at least 30 days have passed between the date of the individual's signature on the consent form and the date upon which the sterilization was performed. If premature delivery occurs or emergency abdominal surgery is required within the 30-day period, the physician must certify that the sterilization was performed less than 30 days but not less than 72 hours after the date of the individual's signature on the consent form because of premature delivery or emergency abdominal surgery, as applicable. In the case of premature delivery, the physician must also state the expected date of delivery. In the case of emergency abdominal surgery, the physician must describe the emergency.

(3) If an interpreter is provided, the interpreter must certify that he or she translated the information and advice presented orally, read the consent form and explained its contents and to the best of the interpreter's knowledge and belief, the individual to be sterilized understood what the interpreter told him or her.

§ 50.206 Sterilization of a mentally incompetent individual or of an institutionalized individual.

Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any mentally incompetent individual or institutionalized individual.

§ 50.207 Sterilization by hysterectomy.

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of any