

STERILIZATION

A Fact Sheet from the Minnesota Disability Law Center.

This fact sheet on sterilization is intended to provide general information. It is not a substitute for legal advice for your situation.

1. Sterilization: What it is and what it isn't

“Sterilization” means any medical procedure done in order to make a person permanently unable to have children. Both women and men can be sterilized. A woman who has been sterilized will be unable to become pregnant. A man who has been sterilized will be unable to biologically father a child. The most common method of sterilization is surgery. For women, the most common surgical sterilization procedure is a tubal ligation; for men, a vasectomy.

Most birth control methods are not considered forms of sterilization. This includes even long-lasting methods such as Norplant implants and Depo-Provera injections. Unlike most forms of birth control, sterilization is both *permanent* and irreversible – once a person has been sterilized, he or she will never be able to have children. Because sterilization usually involves surgery, it is also potentially riskier than other forms of birth control. For these reasons, sterilization should always be a last resort. It should be considered only if less extreme methods of birth control are impossible, ineffective, or unsafe.

2. Informed Consent

Like any serious medical procedure, sterilization can only be performed on a person who has given informed consent for the procedure. Informed consent means that the person has been given relevant information, the risks and effects of the procedure have been explained, and the person has both the ability to consider this information and has made a voluntary decision to undergo the procedure.

Children under 18 cannot legally give informed consent for sterilization. An adult who is under a full guardianship by court order cannot legally give consent either. However, an adult who is under a limited guardianship that does not give the court appointed guardian decision-making authority over medical decisions may give consent for sterilization.

3. Consent for Children

Children under 18 should virtually never be sterilized. First, sterilization is seldom necessary due to the availability and effectiveness of less extreme methods of birth control. Second, permanent sterilization of people, while still children, means that they will never be able to make their own choice as adults whether or not to have children.

Informed consent for medical procedures for children under 18 can be given by a parent who retains full parental rights. Once a child reaches the age of 18, parents have no legal authority to consent to sterilization.

Minnesota law does not require a parent who retains full parental rights to get a court order to have their child under 18 sterilized, even if the child has a disability. However, in MDLC's experience most medical providers in Minnesota will not perform a sterilization procedure on a minor child without a court order.

4. Consent for adults or children with a court-appointed guardian

Under Minnesota law an adult or child who has a court-appointed legal guardian may not be sterilized without court authorization. In order to receive authorization to consent to sterilization, a guardian must petition the court. Guardians do not have to get court approval to refuse to have the person sterilized.

Before a guardian consents to sterilization or experimental treatment of any kind, the procedure must first be approved by court order. If the guardian believes that sterilization is necessary for the proper care of the ward, the guardian must petition the court for an order.

- The court must set a time and date for a hearing.
- The court must appoint an attorney to represent the ward if he or she is not represented by counsel.
- The court must determine if the procedure is in the best interest of the ward.

In making its decision, the court shall:

- Consider a written medical report which
 - A. Specifically considers the medical risks of the procedure;
 - B. Whether alternative less restrictive methods of treatment could be used to protect the best interests of the ward; and
 - C. For a public ward, any recommendation of the commissioner of human services.

The standard of proof is clear and convincing evidence.

5. Court approval of sterilization for adults under guardianship who have developmental disabilities

In the case of a petition to court for sterilization of a developmentally disabled ward, the guardian must petition the court. The court must appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of developmental disability and a social worker or case manager who is familiar with the ward to examine or evaluate the ward and to provide written reports to the court.

The reports must say why sterilization is being proposed, whether it is necessary and is the least intrusive method for solving the problem and whether it is in the ward's best interest.

The medical report must specifically consider the medical risks of sterilization, the consequences of not performing the sterilization and whether alternative methods of contraception could be used to protect the ward's best interests. Minn. Stat. §§ 524.5-313 (year).

6. Medical Assistance payment for sterilization

Medical Assistance will pay for sterilization only under certain conditions. In order for Medical Assistance to pay for a procedure done for the purpose of making a person permanently incapable of reproducing, the person to be sterilized must:

- Be at least 21 years old;
- Not be considered mentally incompetent or institutionalized;
- Have given informed consent to the sterilization.

Under federal and state law, informed consent means the person has been given the following:

- A copy of the consent form;
- An explanation of the consent form;
- Advice that you can change your mind at any time prior to the surgery;

- A description of the alternatives, such as family planning and birth control;
- Advice that sterilization is permanent;
- An explanation of the procedure;
- A description of the discomforts, risks, possible side effects;
- A description of any benefits or advantages;
- A 30-day waiting period between the consent and the surgery.

Medical Assistance will not pay for sterilization of children or of people who have a legal guardian. Medical Assistance will not pay for hysterectomies that are done only to prevent pregnancy.

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