



TITLE

**CONSENT TO TREATMENT/PROCEDURE(S): ADULTS WITH IMPAIRED CAPACITY AND ADULTS WHO LACK CAPACITY**

SCOPE

Provincial

DOCUMENT #

PRR-01-02

APPROVAL AUTHORITY

Executive Leadership Team

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SPONSOR

Vice President, Health Professions & Practice;  
Associate Chief Medical Officer, Quality & Medical Affairs

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Consent to Treatment/Procedure(s) Policy (#PRR-01)

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January 16, 2023

**NOTE:** The first appearance of terms in bold in the body of this document (except titles) are defined terms – please refer to the Definitions section.

If you have any questions or comments regarding the information in this document, please contact the Policy & Forms Department at [policy@ahs.ca](mailto:policy@ahs.ca). The Policy & Forms website is the official source of current approved policies, procedures, directives, standards, protocols and guidelines.

## OBJECTIVES

- To facilitate an **informed consent process** within Alberta Health Services (AHS) that reflects good practice, contributes to **patient** safety, and enhances the patient experience.
- To ensure **treatment/procedure(s)** align with the advanced care planning directives of the patient, are in the best interests of the patient, and are consistent with the patient's beliefs and preferences.
- To address **adult** patients who are unable to make independent treatment/procedure(s) decisions but can do so with a **co-decision-maker** or have an **alternate decision-maker** to make treatment/procedure(s) decisions on their behalf.
- To set out the specific actions to be taken during the informed consent process for adults with impaired **capacity** and adults who lack capacity.

## APPLICABILITY

Compliance with this document is required by all Alberta Health Services employees, members of the medical and midwifery staffs, Students, Volunteers, and other persons acting on behalf of Alberta Health Services (including contracted service providers as necessary).

**ELEMENTS****1. Determination of Capacity**

- 1.1 An adult patient is presumed to have capacity to make treatment/procedure(s) decisions unless the patient is determined to lack capacity.
- 1.2 Where there are concerns that the patient may lack capacity, then the **most responsible health practitioner (MRHP)** shall determine:
- a) if there is a court order appointing a co-decision-maker or a **guardian** for the patient;
- (i) Assessment for a co-decision-making order shall be completed by a designated capacity assessor as per the *Adult Guardianship and Trusteeship Act*. This may include:
- **Physicians;**
  - Psychologists;
  - Registered Nurses;
  - Registered Psychiatric Nurses;
  - Occupational Therapists; and
  - Social Workers;
- or
- b) if the patient has an **agent** designated under an activated **personal directive** (as per the *Personal Directives Act*).
- 1.3 Where there are concerns that the patient may lack capacity and there is no co-decision-maker, guardian, or activated personal directive, the MRHP should assess the patient's capacity or take steps to have the patient's capacity assessed.
- 1.4 If it is determined through a capacity assessment that the patient lacks capacity, the MRHP should consider whether activating the patient's personal directive or selecting a **specific decision-maker** is appropriate and available in the circumstances, and complete the appropriate legislated forms/schedules.
- 1.5 The determination of capacity shall relate to each specific treatment/procedure(s) or plan of treatments/procedure(s).

## 2. Who May Give Informed Consent

- 2.1 The ability to provide **informed consent** for a patient with impaired capacity or a patient who lacks capacity rests either with the patient and their co-decision-maker or with the patient's alternate decision-maker.
- 2.2 Patient and their Co-Decision-Maker:
- a) The MRHP shall verify the status of the co-decision-maker by obtaining a copy of and reviewing the court order appointing the co-decision-maker.
  - b) The MRHP shall verify through review of the court order provided that the co-decision-maker has the authority to assist with decision-making.
- 2.3 Guardian:
- a) The MRHP shall verify the status of the guardian by obtaining a copy of the court order appointing the guardian.
  - b) The MRHP shall verify through review of the court order provided that the guardian has the authority to consent to the treatment/procedure(s).
- 2.4 Agent under an Activated Personal Directive:
- a) The MRHP shall verify the status of the agent through a registry maintained by the Office of the Public Guardian, or by obtaining a copy of the personal directive and the Schedule (2 or 3) used to activate the personal directive.
  - b) The MRHP shall verify through review of the applicable documents provided that the agent has the authority to provide informed consent to the treatment/procedure(s).
- 2.5 Specific Decision-Maker:
- a) The MRHP may select a specific decision-maker (via Form 6) to make a decision for an adult respecting the adult's health care or the adult's temporary admission to or discharge from a residential facility.
  - b) Prior to selecting a specific decision-maker, the MRHP shall consider whether the treatment/procedure(s) falls within one (1) of the categories of decisions that the specific decision-maker is excluded from making, including:
    - (i) **psychosurgery** as defined in the *Mental Health Act*,
    - (ii) sterilization that is not medically necessary to protect the adult's health;

- (iii) removal of tissue from the adult's living body for medical education or research purposes;
  - (iv) health care that involves participation in experimental activities that offer little or no potential benefit to the adult;
  - (v) health care provided to a **formal patient** or a patient subject to a **Community Treatment Order** under the *Mental Health Act*, and
  - (vi) where the decision would be likely to result in the imminent death of the patient.
- 2.6 If the MRHP is concerned that the decision being made by the patient and their co-decision-maker or by the patient's alternate decision-maker is not in the patient's best interests, is non-compliant with their duties and obligations as set out under the applicable legislation, or is outside their authority, the MRHP should seek legal advice and consider contacting the Office of the Public Guardian.
- a) The MRHP is responsible to make decisions that are consistent with the direction given by the patient and/or alternate decision-maker(s) and that are in the patient's best interest.

### 3. Disagreement between Alternate Decision-Makers

#### 3.1 Guardians:

- a) Where there is more than one (1) guardian and the **health care professional** is aware that the guardians disagree regarding the informed consent to a particular treatment/procedure(s) of the patient, the guardians should be encouraged to come to a consensus.
- b) Where agreement between guardians cannot be reached, the treatment/procedure(s) cannot proceed without further direction from the Court.

#### 3.2 Agents under an Activated Personal Directive:

- a) Where there is more than one (1) agent designated under a personal directive and:
  - (i) each agent has equal decision-making authority granted under the personal directive;
  - (ii) the agents do not agree on a treatment/procedure(s); and
  - (iii) the personal directive contains no direction for resolving the disagreement;

if there are an even number of agents (two [2], four [4], etc.), the treatment/procedure(s) cannot proceed without direction from the Court or agreement by the agents; or

if there are an odd number of agents (three [3], five [5], etc.) the decision of the majority of the agents is deemed to be the decision.

- 3.3 If issues arise during the informed consent process, the Office of the Public Guardian may be contacted for assistance with the decision-making process, as appropriate.

#### 4. Refusal of Treatment/Procedure(s) and Withdrawal of Consent

- 4.1 Where a patient and their co-decision maker or the patient's alternate decision-maker refuses to consent to a treatment/procedure(s) or withdraws previously given informed consent, the MRHP shall explain the potential risks and consequences of the refusal or withdrawal of informed consent, without undue influence.
- 4.2 In the event that a patient and their co-decision-maker, or the patient's alternate decision-maker refuses a treatment/procedure(s) or withdraws previously given informed consent prior to the start of the treatment/procedure(s), even when it is clear that the treatment/procedure(s) is necessary to preserve the patient's life or health, the MRHP shall respect the wishes of the patient and co-decision-maker or the patient's alternate decision-maker. In such an instance, the treatment/procedure(s) shall not be carried out, even if failure to provide such a treatment/procedure(s) may result in the patient's death.
- a) A specific decision-maker has no authority to make a decision respecting a treatment/procedure(s) where the provision of, withdrawal, or withholding of health care would be likely to result in the imminent death of the patient.
- b) If the MRHP is concerned that the decision being made by the patient and their co-decision-maker or by the patient's alternate decision-maker to refuse the treatment/procedure(s) or to withdraw informed consent is not in the patient's best interests, is non-compliant with the patient's alternate decision-maker's duties and obligations as set out under the applicable legislation, or is outside the patient's alternate decision-maker's authority, the MRHP should seek legal advice and consider contacting the Office of the Public Guardian.
- 4.3 The patient and co-decision maker or the patient's alternate decision-maker may provide informed consent again at any time following a subsequent informed consent discussion.

- 4.4 A patient and their co-decision-maker, or the patient's alternate decision-maker, may refuse to consent to blood testing for HIV, hepatitis B, and hepatitis C. In the event of the exposure of a **health care provider** to a needle-stick injury or a patient's bodily fluids where a blood-borne virus is suspected, and the patient refuses to consent to blood testing, the health care provider shall immediately contact their respective Zone Workplace Health and Safety Occupational Health Nurse (WHS OHN) and advise of the exposure and if informed consent for testing was provided by the patient and their co-decision-maker or the patient's alternate decision-maker.
- 4.5 After a treatment/procedure(s) has been commenced, the MRHP shall stop providing the treatment/procedure(s) immediately upon the withdrawal of the informed consent and shall revisit the informed consent process with new or additional information that should be shared with the patient and their co-decision maker or the patient's alternate decision-maker.
- a) If the termination of the treatment/procedure(s) will result in immediate and serious risk to the patient, the MRHP may be required to continue with the originally consented to treatment/procedure(s) to the extent required to limit the immediate and serious risk to the patient.

## DEFINITIONS

**Adult** means a person aged 18 years and older.

**Agent** means the person(s) named in a personal directive who can make decisions on personal matters according to the wishes expressed by the patient.

**Alternate decision-maker** means a person who is authorized to make decisions with or on behalf of the patient. These may include, specific decision-maker, a minor's legal representative, a guardian, a 'nearest relative' in accordance with the *Mental Health Act* (Alberta) or an agent in accordance with a Personal Directive or a person designated in accordance with the *Human Tissue and Organ Donation Act* (Alberta). This also includes what was previously known as the substitute decision-maker.

**Capacity** means the ability for the patient to 1) understand the nature, risks, and benefits of the procedure and the consequences of consenting or refusing; and 2) understand that this explanation applies to them.

**Co-decision-maker** means a person selected by the patient and appointed by the Court to make decisions in partnership with the patient, when the patient has significantly impaired capacity but can still participate in decision-making.

**Community Treatment Order** means an order issued under Section 9.1 of the *Mental Health Act* (Alberta).

**Formal patient** means a patient detained in a designated mental health facility under two admission certificates or two renewal certificates, in accordance with the *Mental Health Act* (Alberta).

**Guardian** means, where applicable:

For a minor:

- a) A guardian as defined by the *Family Law Act* (Alberta), a divorced parent with custody of the minor, or a person appointed pursuant to a will, personal directive, court order, agreement or by authorization of legislation (e.g., *Child, Youth and Family Enhancement Act* [Alberta]).

For an adult:

- a) An individual appointed by the Court in accordance with the *Adult Guardianship and Trusteeship Act* (Alberta) to make decisions on behalf of the adult patient when the adult patient lacks capacity.

**Health care professional** means an individual who is a member of a regulated health discipline, as defined by the *Health Disciplines Act* (Alberta) or the *Health Professions Act* (Alberta), and who practises within scope and role.

**Health care provider** means any person who provides goods or services to a patient, inclusive of health care professionals, staff, students, volunteers and other persons acting on behalf of or in conjunction with Alberta Health Services.

**Informed consent** means the patient's agreement (or alternate decision-maker) to undergo a treatment/procedure after being provided, in a manner the patient can understand, with the relevant information about the nature of the treatment/procedure(s), its benefits, potential risks and alternatives, and the potential consequences of refusal.

**Informed consent process** means a discussion or series of discussions and interactions that may occur over a period of time between the most responsible health practitioner and patient or their alternate decision-maker (if applicable) including: i) the determination of capacity, as necessary, ii) the provision of relevant information, iii) the verification of understanding, iv) the decision-making and v) documentation of the consent process and outcome.

**Most responsible health practitioner (MRHP)** means the health practitioner who has responsibility and accountability for the specific treatment/procedure(s) provided to a patient and who is authorized by Alberta Health Services to perform the duties required to fulfill the delivery of such a treatment/procedure(s) within the scope of their practice.

**Patient** means all persons, inclusive of residents and clients, who receive or have requested health care or services from Alberta Health Services and its health care providers. Patient also means, where applicable:

- a) a co-decision-maker with the person; or
- b) an alternate decision-maker on behalf of the person.

**Personal directive** means a written document in accordance with the requirements of the *Personal Directives Act* (Alberta) in which an adult names an agent(s) or provides instruction regarding their personal decisions, including the provision, refusal and/or withdrawal of consent to treatments/procedures. A personal directive (or part of) has effect with respect to a personal matter only when the maker lacks capacity with respect to that matter.

**Physician** means a person licensed in independent practice and in good standing with the College of Physicians and Surgeons of Alberta pursuant to the *Health Professions Act* (Alberta).

**Psychosurgery** means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or that inserts indwelling electrodes for pulsed electric stimulation for the purpose of altering behavior or treating psychiatric illness. Psychosurgery does not include neurological procedures used to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable.

**Specific decision-maker** means a nearest relative who may be selected from a hierarchy of relatives to make a specific decision on behalf of the patient according to the *Adult Guardianship and Trusteeship Act* (Alberta).

**Treatment/procedure(s)** means a specific assessment, treatment, investigative procedure(s), or series of treatments/procedures planned to manage a clinical condition; these can be presented as a treatment plan/intervention.

## REFERENCES

- Alberta Health Services Governance Documents:
  - *Consent to Mental Health Treatment/Procedure(s): Formal Patients and Persons Subject to Community Treatment Orders Under the Mental Health Act Policy* (#PRR-01-04)
  - *Consent to Treatment/Procedure(s) Policy* (#PRR-01)
  - *Consent to Treatment/Procedure(s): Deceased Donation of Human Organs and Tissues Policy* (#PRR-01-05)
  - *Consent to Treatment/Procedure(s): Minors / Mature Minors Procedure* (#PRR-01-03)
  - *Transmission of Information by Facsimile or Electronic Mail Policy* (#1113)
- Alberta Health Services Forms:
  - *Consent to Treatment Plan/Intervention or Procedure Form* (#09741)
- Non-Alberta Health Services Documents:
  - *Adult Guardianship and Trusteeship Act* (Alberta)
  - *Health Professions Act* (Alberta)
  - *Mandatory Testing and Disclosure Act* (Alberta)
  - *Mental Health Act* (Alberta)
  - *Personal Directives Act* (Alberta)
  - *Public Health Act* (Alberta)

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