Consent to Treatment / Procedure(s)
Adults with Impaired Capacity and Adults who Lack Capacity

If you have any questions or comments regarding the information in this procedure, please contact the Clinical Policy Department at clinicalpolicy@albertahealthservices.ca. The Clinical Policy website is the official source of current approved clinical policies, procedures and directives.

OBJECTIVES
This procedure will set out the appropriate actions to be taken during the Consent Process for Adults with Impaired Capacity and Adults who Lack Capacity. This procedure addresses Patients who are over 18 and are unable to make independent decisions but can do so with a Co-Decision Maker or can have an Alternative Decision Maker make decisions on their behalf.

This procedure will address:

1. Who may give consent
2. Who may give consent in partnership with Adults with impaired Capacity
3. Who may give consent on behalf of Adults who lack Capacity
4. Consent is required
5. Exceptions to consent
6. Accountability
7. Consent Process
8. Duration of consent
9. Refusal of Treatment/Procedure

10. Withdrawal of consent

APPLICABILITY
Compliance with this procedure 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 services providers as necessary). This procedure does not limit any legal rights to which you may otherwise be entitled.

PROCEDURE
1. Who May Give Consent

1.1. Consent may be provided with or on behalf of the Patient by the following Co-Decision-Maker / Alternate Decision-Maker(s), as set out in Adult Guardianship and Trusteeship Act, according to a continuum of decision-making Capacity and based on how the Patient would have made the decision if capable.

1.2. Where the Patient is found to be impaired or lacking Capacity, then the Health Practitioner:

   a) Determines whether there is a court order appointing a Co-Decision-Maker on behalf of the Patient;

   b) If there is no court order appointing a Co-Decision-Maker on behalf of the Patient, determines whether the Patient has a valid Personal Directive naming an Agent and if so, determine if the Personal Directive is or needs to be brought into effect;

   c) If the Patient does not have a valid Personal Directive that has been brought into effect, then the Health Practitioner should determine whether there is a court order appointing a Guardian for the Patient;

   d) If there is no court order appointing a Guardian for the Patient, then the Health Practitioner should consider whether the Specific Decision-Maker option is appropriate and available in the circumstances.

1.3. Health Practitioners will check whether an Alternate Decision-Maker exists or verify his/her status through a registry maintained by the Office of the Public Guardian, or by viewing and obtaining a copy of the applicable documents (i.e. Personal Directive or court order). Where an Alternate Decision-Maker exists, the Most Responsible Health Practitioner shall engage the Alternate Decision-Maker in the Consent Process.
2. Who May Give Consent in Partnership with Adults with Impaired Capacity

2.1. Co-Decision-Maker

a) A Patient who is assessed as having significant Capacity impairment, but who is able to make decisions with appropriate guidance, or an interested party, may apply to the court for an order appointing a Co-Decision-Maker to be a partner with the Patient in decision-making for personal matters, including health care.

b) Once a Co-Decision-Maker is appointed by the court, then both the Co-Decision-Maker and the Patient are included jointly in the Consent Process.

c) Decisions are made jointly by the Patient and the Co-Decision-Maker, and both individuals must sign the Consent Form(s). The Co-Decision-Maker cannot provide consent without the joint agreement of the Patient.

3. Who May Give Consent on behalf of Adults who Lack Capacity

3.1. An Agent named in a Personal Directive

a) An Agent who is named in a Personal Directive may participate in the Consent Process on behalf of the Patient only when the Personal Directive has been brought into effect according to the Personal Directives Act. Personal Directives from jurisdictions other than Alberta will need to be reviewed to determine whether they meet the requirements of applicable legislation. Please contact the Alberta Health Services Provincial Clinical Legal Intake Line for assistance with this determination.

b) For a Personal Directive to be enacted, it must first be determined according to the provisions of the Personal Directives Act that the Patient lacks Capacity to make decisions regarding health care or personal matters. Required documentation must also be completed as provided in the regulations under the Personal Directives Act.

c) When the Personal Directive is enacted, the Agent acts on the wishes, if clear, of the Patient as indicated in the Personal Directive. If the wishes are unclear, the Agent makes a decision based on his/her knowledge of the wishes, beliefs and values of the Patient. If these are unknown, then the Agent makes a decision in the best interests of the Patient.

d) If the Agent’s instructions are in conflict with the wishes expressed by the Patient in his/her Personal Directive, the Office of the Public Guardian may be contacted to provide assistance with the decision-making process.
e) The Agent provides consent for, or refuses, the Treatment/Procedure(s) on behalf of the Patient.

3.2. Guardian

a) Guardianship is a process where a Court appoints a person to be the Guardian of a Patient who lacks Capacity, who will then make personal decisions on behalf of the Patient.

b) The Guardian provides consent for, or refuses, the Treatment/Procedure(s) on behalf of the Patient.

c) In a situation where there is reason to believe that a Patient who lacks Capacity is at risk of immediate danger of death or serious physical or mental harm and it is necessary for someone to make decisions to prevent the death or harm, an urgent application for guardianship may be submitted to Court.

3.3. Specific Decision-Maker:

a) A Specific Decision-Maker may be selected if: i) there is no legally designated Agent or Guardian, and ii) the physician, nurse practitioner or dentist (for dental care only), as defined in the Adult Guardianship and Trusteeship Act, has reason to believe that the Patient lacks Capacity to make a time sensitive, specific decision regarding:

- health care as defined under the Adult Guardianship and Trusteeship Act
- temporary admission to a residential facility; or discharge from a residential facility.

Note: Specific Decision-Making for health care excludes:

- psychosurgery as defined in the Mental Health Act;
- sterilization that is not medically necessary to protect the Patient’s health,
- removal of tissue from the Patient’s living body for medical education or research purposes;
- health care that involves participation by the Patient in research or experimental activities, if the health care offers little or no potential benefit to the Patient. The Specific Decision Maker may rely on the Research Ethics Board (as defined in the Health Information Act) for approval of the research, even in the case where there is no known benefit, but also no harm from the treatment;
- any type of health care that is the subject of a treatment decision for an adult who is a Formal Patient as defined in the Mental Health Act;
- decisions on behalf of persons subject to Community Treatment Orders under the Mental Health Act;
• any type of health care where a decision respecting the provision of, or the withdrawal or withholding of, the Treatment/Procedure(s) would be likely to result in the imminent death of the Patient; and
• any other health care prescribed in the Adult Guardianship and Trusteeship regulations.

b) The physician, nurse practitioner or dentist (for dental care only) completes the required Assessment of Capacity prescribed in the Adult Guardianship and Trusteeship Act regulations (Part One of Form 6 from the Office of the Public Guardian: Specific Decision-Making) and selects the nearest relative of the Patient to be the Specific Decision-Maker from the following list in ranked order:
• spouse or adult interdependent partner;
• adult son or daughter;
• father or mother;
• adult brother or sister;
• grandfather or grandmother;
• adult grandson or granddaughter;
• adult uncle or aunt; or
• adult nephew or niece.

AND the physician, nurse practitioner or dentist (for dental care only) ensures that the relative selected:
• is 18 years of age or older;
• is willing and available to make the decision;
• is able to make the decision;
• has been in contact with the Patient in the previous 12 months;
• has knowledge of the Patient’s wishes respecting the decision or of the beliefs and values of the Patient; and
• does not have a dispute with the Patient that might affect his/her ability to perform the duties of a Specific Decision-Maker.

c) If there is no relative available or appropriate to act as the Specific Decision-Maker, the physician, nurse practitioner or dentist (for dental care only) may select the Office of the Public Guardian to be the Specific Decision-Maker, and shall act upon the decision made by the Office of the Public Guardian or the person authorized by the Office of the Public Guardian to be the Specific Decision-Maker.

d) The person who is acting as the Specific Decision-Maker completes the Declaration of Specific Decision-Maker (Part Two of Form 6 from the Office of the Public Guardian: Specific Decision-Making).
e) The physician, nurse practitioner or dentist (for dental care only) engages the Specific Decision-Maker in the Consent Process and acts upon the decision of the Specific Decision-Maker, subject to g) below.

f) The physician, nurse practitioner or dentist (for dental care only) completes the Health Provider’s Record of Specific Decision-Maker (Part Three of Form 6 from the Office of the Public Guardian: Specific Decision-Making).

g) If, at any point during the Consent Process or while the decision is being acted upon, the physician, nurse practitioner or dentist (for dental care only) is informed of:
   - a request for or the intention to request a capacity assessment of the Patient;
   - an application or the intention to apply to the Court for a review of the Patient’s capacity assessment or the decision of the Specific Decision-Maker; or
   - an application or the intention to apply to the Court for the appointment of a Co-Decision-Maker or Guardian for the Patient.

Then the physician, nurse practitioner or dentist (for dental care only) shall not act or continue to act on the decision made by the Specific Decision-Maker.

h) Subsequent to (g) above, the physician, nurse practitioner or dentist (for dental care only) may act upon the decision of the Specific Decision-Maker if:
   - arrangements for a capacity assessment are not made within the required timeframe (7 days);
   - a capacity assessment confirms the Patient is without Capacity to make the specific decision;
   - an application to the Court for review of the Patient’s capacity assessment or of the Specific Decision-Maker’s decision is not commenced within seven days from when the physician, nurse practitioner, or dentist was informed of the intent to apply to the Court for a review;
   - an application to the Court for review of the Patient’s capacity assessment or of the Specific Decision-Maker’s decision is withdrawn; or
   - the Court upholds the decision of the Specific Decision-Maker.

i) The physician, nurse practitioner or dentist (for dental care only) shall document in the Patient’s Health Record the situation, process and decisions requiring a specific decision.

j) The Most Responsible Health Practitioner documents the Consent Process and outcome in the Patient’s Health Record

3.4. Any other person authorized by law (e.g. ‘nearest relative’ in accordance with mental health legislation for Formal Patients who lack Capacity and persons subject to Community Treatment Orders, who lack Capacity).
4. **Consent is Required**

4.1 Before a Treatment/Procedure(s) is provided, there must be Express or Implied Consent, unless a valid exception applies. (see section 5 for exceptions)

   a) Additional Treatment/Procedure(s) that have nothing to do with the original Treatment/Procedure(s) but are discovered to be convenient at the time or even beneficial, may not be provided without prior consent except in the case of an emergency.

4.2 All consent shall be informed whether it is Express or Implied Consent.

4.3 The Most Responsible Health Practitioner is responsible for ensuring that there is valid and informed consent for any given Treatment/Procedure(s) and is also responsible for determining the most appropriate method of obtaining that consent. Informed Consent may be expressed verbally or in writing, or be implied.

   Notwithstanding section 4.3, and with the exception of an emergency situation (in an emergency, please refer to section 5.1) Express written consent shall be obtained for the transfusion of blood and blood products.

4.4 The Most Responsible Health Practitioner shall consider the nature, risks, consequences and alternatives of the Treatment/Procedure(s). Where the Most Responsible Health Practitioner determines that Express Consent is required to evidence the Patient's, or his/her Alternate Decision-Maker's, agreement to the Treatment/Procedure(s):

   a) Verbal consent shall be documented by the Most Responsible Health Practitioner in the Patient’s Health Record; and/or

   b) Written consent shall be documented by the Most Responsible Health Practitioner through obtaining the signature of the Patient or his/her Alternate Decision-Maker on the Consent Form, which shall then be attached to the Patient’s Health Record. Prior written consent shall not be obtained whenever analgesic, narcotic or anaesthetic agents will significantly affect the Patient’s level of consciousness.

4.5 Implied Consent may be presumed in (but is not limited to) circumstances where the Patient with an Alternate Decision-Maker presents voluntarily for an examination, investigation, minor or less invasive Treatment/Procedure which the Most Responsible Health Practitioner determines does not require Express Consent.

   a) Implied Consent must still be informed.

   b) The Most Responsible Health Practitioner should be satisfied that the circumstances or actions of the Patient and/or Alternate Decision-Maker (as appropriate) imply permission for the examinations, investigations and
Treatment/Procedure(s) proposed. If there is any doubt that there is Implied Consent, the Most Responsible Health Practitioner shall obtain Express Consent from the Patient and/or Alternate Decision-Maker.

5. Exceptions to Consent

5.1. Emergency Health Care:

a) Physicians may provide emergency health care, where immediate Treatment/Procedure(s) is necessary to:
   • preserve the Patient’s life;
   • prevent serious physical or mental harm; or
   • alleviate severe pain.

and the Patient cannot otherwise provide consent due to drug/alcohol impairment, complete or partial unconsciousness, or another cause;

and there is no evidence that the Patient previously, while competent, expressed wishes to the contrary;

and the Patient does not have a Guardian or Agent, or the Guardian or Agent of the Patient is not immediately available.

b) Other qualified Health Practitioners may provide emergency health care, where immediate Treatment/Procedure(s) is necessary to:
   • preserve life or health;

and the Patient cannot otherwise provide consent due to drug/alcohol impairment, complete or partial unconsciousness, or another cause;

and there is no evidence that the Patient previously, while competent, expressed wishes to the contrary;

and the Patient does not have a Guardian or Agent, or the Guardian or Agent of the Patient is not immediately available;

and no physician is available.

c) Before providing the emergency Treatment/Procedure(s), the physician shall, when practical, obtain a written opinion from a second physician, nurse practitioner or registered nurse that: i) the situation meets the conditions for providing emergency health care; and ii) that the Patient lacks Capacity to provide consent.

OR where emergency Treatment/Procedure(s) is provided by a Health Practitioner other than a physician, the Health Practitioner shall document the
conditions for providing the emergency Treatment/Procedure and that the Patient lacks Capacity to provide consent.

d) Any additional details of the emergency situation and all Treatment/Procedure(s) decisions shall be documented on the Patient’s Health Record.

e) All reasonable efforts shall be made to contact the Patient’s Alternate Decision-Maker (where known) or nearest relative if there is no Alternate Decision-Maker to advise that an emergency Treatment/Procedure(s) was provided.

f) This emergency exception is only valid during the emergency situation. All future Treatment/Procedure(s) provided outside the emergency exception shall require consent and be documented on the Patient’s Health Record.

5.2. Exceptional Circumstances: the requirement for Informed Consent may be overridden by a warrant, subpoena, court order or according to applicable legislation (for example: treatment order under the Mental Health Act; orders under the Public Health Act; orders under the Mandatory Testing and Disclosure Act).

6. Accountability for Obtaining Consent

6.1. The accountability to obtain Informed Consent shall rest with the Most Responsible Health Practitioner who is providing the specific Treatment/Procedure(s). In most circumstances, the Most Responsible Health Practitioner is a physician but may be another Health Practitioner who is providing the Treatment/Procedure(s).

6.2. The Most Responsible Health Practitioner remains accountable for the Consent Process, although more than one Health Practitioner may be involved in providing the Treatment/Procedure(s).

6.3. Exception: Sections 6.1 and 6.2 do not apply in the case of human tissue and organ donation. See procedure: Consent to Treatment/Procedure(s): Human Tissue and Organ Donation, section 4.

7. Consent Process

The provision of consent, and determination of the Capacity to consent, must relate to a specific Treatment/Procedure.

7.1. Determination of Capacity to Provide Informed Consent

a) The Most Responsible Health Practitioner must determine whether the Patient has the Capacity to consent to or refuse a Treatment/Procedure(s) and, where
there is impaired Capacity or lack of Capacity, that an appropriate Co-Decision-Maker / Alternate Decision-Maker is available.

b) If the Patient is able to participate in the Consent Process with a Co-Decision-Maker, consent should not be obtained after the administration of sedating medication, or while the Patient is mentally compromised (i.e. under the influence of drugs, alcohol, in shock etc.), as the circumstances may render the Patient incapable of providing informed and voluntary consent.

7.2. Providing Relevant Information

a) The Most Responsible Health Practitioner shall give the Patient and his/her Co-Decision-Maker, or his/her Alternate Decision-Maker (if applicable), or ensure the Patient and his/her Co-Decision-Maker, or his/her Alternate Decision-Maker has received, the information that a reasonable person in the patient’s circumstances would require to understand the proposed specific Treatment /Procedure(s) and to make an informed decision including, but not limited to, information about:

- the condition for which the Treatment/Procedure(s) is proposed;
- the nature of the proposed Treatment/Procedure(s), including “basket(s)” of Procedures where clinically indicated and approved;
- the risks and benefits of the proposed Treatment/Procedure(s) that a reasonable person in the Patient’s circumstances would expect to be told about (if the Most Responsible Health Practitioner becomes aware of particular circumstances of the Patient that might affect the information the Patient would want or his/her treatment decisions, the Most Responsible Health Practitioner has a duty to address those particular circumstances with further information as appropriate);
- alternatives to the proposed Treatment/Procedure(s); and
- the likely consequences of not undertaking the Treatment/Procedure(s).

b) Consent is not valid if obtained in circumstances of fraud or through coercion. All information provided to the Patient and his/her Co-Decision-Maker, or his/her Alternate Decision-Maker (if applicable) must be accurate and understandable by the Patient and his/her Co-Decision-Maker, or his/her Alternate Decision-Maker (if applicable).

7.3 Understanding of Information

a) Consent will be considered valid if the Most Responsible Health Practitioner is of the opinion that the Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker, understands the purpose, nature, risks, benefits, consequences and alternatives of the proposed Treatment /Procedure(s).

- The Health Practitioner(s) involved in the Consent Process should communicate with the Patient and the Patient’s Co-Decision-Maker, or the Patient’s Alternate Decision-Maker, in a manner appropriate to the Patient’s, his/her Co-Decision-Maker’s, or his/her Alternate Decision-Maker’s, ability to
understand. The Health Practitioner(s) must review any barriers to communication including but not limited to: hearing, sight, language, culture, literacy, level of education, level of anxiety and stress, and environmental factors, including location of discussion.

- The Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker (as appropriate), shall be given the opportunity to ask questions and to receive understandable answers.

- If the Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker (as appropriate) is unable to understand the discussion or to read or understand the Consent Form, the contents of the Consent Form shall be read and explained to the Patient in the presence of a witness and with the assistance of an interpreter as necessary.

- The Most Responsible Health Practitioner may allow, at the Patient’s request, the Patient’s Co-Decision-Maker, spouse, or any relatives or friends that accompany the Patient and offer their assistance, to help the Patient to understand or demonstrate an understanding of the information. That individual may not be the witness to the Consent Form.

- The Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker, should be given time, when it is clinically safe to do so, to reflect on the information prior to making an informed decision.

7.4. Decision-Making

a) The ability to provide consent rests solely with the Patient and his/her Co-Decision-Maker, or the Alternate Decision-Maker (if applicable), but the discussion of information leading to the decision being made is a shared process between the Patient and his/her Co-Decision-Maker, or the Alternate Decision-Maker, and the Most Responsible Health Practitioner.

b) A decision related to Treatment/Procedure(s) made by a Patient and his/her Co-Decision-Maker, or the Alternate Decision-Maker, should be made without fear, constraint, compulsion or duress.

c) If the Alternate Decision Maker is a Specific Decision Maker, it must be considered whether the decision to consent to, or refuse, treatment falls within one of the categories of decisions that the Specific Decision Maker is excluded from making [see section 3.3(a)].

d) If issues arise during the decision-making process that cannot be resolved in discussion between the Patient and his/her Co-Decision-Maker, or the Alternate Decision-Maker, and the Most Responsible Health Practitioner, the Office of the Public Guardian may be contacted for assistance in the decision-making process.

e) Consent discussions should not occur in circumstances where the Patient feels pressured or does not have a reasonable opportunity to reflect on the decision or
ask questions. Specifically, except in emergency situations, consent discussions should not take place in the operating room or its environs.

7.5. Documentation of Consent Process

a) The Most Responsible Health Practitioner providing the Treatment/Procedure shall ensure that the Consent Process has been followed and that the Consent Process and outcome are documented appropriately in the Patient’s Health Record. Specifically, the following outcomes shall be documented:
   • Agreement to the Treatment/Procedure(s)
   • Refusal of the Treatment /Procedure(s) (see section 9)
   • Withdrawal of consent previously given (see section 10)

b) All relevant legal documents including, but not limited to, court orders, personal directives, capacity assessments and evidence of the formal status of Alternate Decision-Makers shall be documented on the Patient’s Health Record.

c) While the requirements for documentation outlined in a) above are met by appropriately filling in the applicable Consent Form where written consent has been deemed necessary, documentation on the Patient’s Health Record regarding the consent discussion is highly recommended.

d) Prior to the Patient and his/her Co-Decision-Maker, or the Alternate Decision-Maker signing the Consent Form, the Most Responsible Health Practitioner shall ensure that the name of the specific Treatment/Procedure(s) is filled in. No abbreviations shall be used on the Consent Form.

e) Consent may be obtained in the Most Responsible Health Practitioner’s office if applicable. Completed Consent Forms shall be forwarded to the applicable Alberta Health Services setting where the Patient will be receiving the Treatment/Procedure(s).

f) Completed Consent Forms required for Treatment/Procedure(s) may be in a faxed or scanned format. Where possible, and at the earliest opportunity, the original Consent Form shall be obtained and placed on the Patient’s Health Record.

g) In the event that an interpreter is used, the interpreter shall complete the relevant documentation on the Consent Form.

h) A blind or disabled person’s “mark” is recognized as a valid signature on the Consent Form.

i) The Consent Form shall be added to the Patient’s Health Record.

7.6. Telephone Consent by the Co-Decision-Maker or Alternate Decision-Maker
a) Consent may be accepted by telephone when written consent is required but is not possible to obtain in person. However, if the Alternate Decision-Maker is a Specific Decision-Maker, it must be considered whether the decision to consent to, or refuse, treatment falls within one of the categories of decisions that the Specific Decision-Maker is excluded from making [see section 3.3(a)]. It is recommended that the Most Responsible Health Practitioner follow the Consent Process via the telephone, including reading the Consent Form to the Patient and his/her Co-Decision-Maker or Alternate Decision-Maker (as appropriate).

b) When possible, and in particular when the Most Responsible Health Practitioner feels that it is necessary to have a witness to the Consent Process, a witness shall be used. The telephone call may also be recorded.

c) At the earliest opportunity, a written Consent Form should be completed and placed on the Patient’s Health Record.

7.7. Witnessing a Consent or a Refusal of Treatment/Procedure(s)

Written consent should always be witnessed.

a) Any person, other than a relative of the Patient and his/her Co-Decision-Maker or Alternate Decision-Maker, the Most Responsible Health Practitioner or the interpreter for the Patient and his/her Co-Decision-Maker or Alternate Decision-Maker, may witness the signing of a Consent Form.

b) Before acting as a witness, the witness shall confirm the Patient’s identity or if the signee is not the Patient, request to see a form of identification. The witness may also confirm that the person making a mark on behalf of the Patient has been asked to do so by the Patient. Witnessing a Consent Form indicates ONLY that the witness observed the Consent Form being signed and is not evidence of the Consent Process.

c) In the event that the Patient and his/her Co-Decision-Maker or Alternate Decision-Maker expresses doubt about the Consent Process and requests further explanation, the witness shall not sign the Consent Form and the Most Responsible Health Practitioner shall be notified.

8. Duration of Consent

8.1. A new consent shall be obtained and if that consent was previously obtained in writing, then a new Consent Form shall be completed, or changes made to the original form, with the changes initialed by the Patient and Co-Decision-Maker or Alternate Decision-Maker (as applicable) and the Most Responsible Health Practitioner (and witnessed), when one or more of the following occurs:

a) The Patient’s condition has materially changed;
b) The medical knowledge about the Patient’s condition or the treatment available has materially changed; or

c) There has been a refusal to a portion of the Treatment/Procedure(s) originally planned or a refusal regarding the involvement of particular individuals in the Treatment/Procedure(s) (e.g. medical trainees).

8.2. The Most Responsible Health Practitioner is responsible for confirming the validity of consent prior to the delivery of the Treatment/Procedure(s).

9. Refusal of Treatment / Procedure

9.1. Subject to Sections 5.2 and 9.5, in the event that a Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker refuses a Treatment/Procedure(s), the Most Responsible Health Practitioner shall respect the wishes of the Patient and Co-Decision-Maker, or Alternate Decision-Maker. However, if the Alternate Decision-Maker is a Specific Decision-Maker, it must be considered whether the decision to refuse treatment falls within one of the category of decisions that the Specific Decision-Maker is excluded from making [see section 3.3(a)]

9.2. Adult Patients who carry written and signed statements refusing the infusion of blood products shall have their wishes respected. This includes situations where the Patient presents to an Alberta Health Services setting for emergency health care and is unable to provide consent.

9.3. Subject to sections 5.2 and 9.5, with the exception of a Specific Decision-Maker, a Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker, may refuse a Treatment/Procedure(s) on any grounds, even when it is clear that the Treatment/Procedure(s) is necessary to preserve his/her life or health. In this instance, the Treatment/Procedure(s) shall NOT be carried out, even if failure to provide such an intervention may result in the Patient’s death.

9.4. If a Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker, refuses a Treatment/Procedure, it is important to explain the risks and consequences of the refusal to the Patient, Co-Decision-Maker, or Alternate Decision-Maker.

a) This explanation should, where practical, be witnessed by a second Health Practitioner.

b) The Most Responsible Health Practitioner shall document the refusal on the Patient’s Health Record.

9.5. If treatment, particularly life preserving or life saving treatment, is being refused for a Patient who lacks Capacity or with impaired Capacity, in conjunction with a Co-Decision-Maker or Alternate Decision-Maker as applicable, if the Most Responsible Health Practitioner is concerned that the decision being made is not in the Patient’s best interests, the Most Responsible Health Practitioner should seek legal advice.
9.6. A Patient and his/her Co-Decision-Maker, or 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 Practitioner to a Patient’s bodily fluids where a blood borne virus is suspected, and the Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker, refuses to consent to blood testing, the Health Practitioner should immediately contact Alberta Health Services Workplace Health & Safety.

10. Withdrawal of Consent

10.1. Subject to Sections 5.2 and 9.5, a Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker may, at any time, withdraw a consent previously given, even if that decision may likely result in the Patient’s imminent death. However, if the Alternate Decision-Maker is a Specific Decision-Maker, it must be considered whether the decision to withdraw consent falls within one of the category of decisions that the Specific Decision-Maker is excluded from making [see section 3.3(a)].

10.2. The requirement for Consent (or the withdrawal of Consent) may be overridden by a warrant, subpoena or court order or by operation of legislation.

10.3. It is important that the Patient and his/her Co-Decision-Maker or Alternate Decision-Maker understands the consequences of withdrawing consent for Treatment/Procedure(s). The Most Responsible Health Practitioner must advise the Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker, of the risks of not proceeding with the Treatment/Procedure(s). This discussion and the Patient’s, Co-Decision-Maker’s or Alternate Decision-Maker’s withdrawal of consent shall be documented on the Patient’s Health Record. Specifically, the withdrawal of consent shall be noted on the Consent Form. Other documentation may include:

a) A summary of the information that was provided to the Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker about the Treatment/Procedure(s).

b) The reasons for withdrawing consent, if known; and

c) The expected outcome of not receiving the Treatment/Procedure(s).

10.4. The Patient and his/her Co-Decision-Maker, or Alternate Decision-Maker may provide consent again at any time following an Informed Consent discussion. However, if the Alternate Decision-Maker is a Specific Decision-Maker, it must be considered whether the decision to re-consent falls within one of the category of decisions that the Specific Decision-Maker is excluded from making [see section 3.3(a)].

DEFINITIONS

Adult means a person aged eighteen (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.
Alberta Health Services Setting means any environment where Treatment/Procedures and other health care is delivered by, on behalf of or in conjunction with Alberta Health Services.

Alternate Decision-Maker means a person who is authorized to make decisions with or on behalf of the Patient. These may include a Specific Decision-Maker, a Guardian, a ‘nearest relative’ in accordance with the Mental Health Act or an Agent in accordance with a Personal Directive or a person in accordance with the Human Tissue and Organ Donation Act.

Capacity means 1) the Patient understands the nature, risks and benefits of the procedure and the consequences of consenting or refusing and 2) the Patient understands that this explanation applies to him/her.

In the context of Treatment of a Formal Patient or a person subject to a Community Treatment Order under applicable mental health legislation, capacity is addressed in section 26 of the Mental Health Act which states that a person is mentally competent to make Treatment decisions if the person is able to understand the subject matter relating to the decisions and able to appreciate the consequences of making the decisions.

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.

Consent Form means an Alberta Health Services approved form of documentation that can be used to provide evidence of the outcome of the Consent Process, that is, agreement to or refusal of a Treatment/Procedure.

Consent Process means a discussion or series of discussions and interactions between the Most Responsible Health Practitioner and Patient and his/her Co-Decision-Maker or Alternate Decision-Maker including: i) the establishment of Capacity, if necessary ii) provision of relevant information, iii) the verification of understanding, iv) the decision-making and v) documentation of the Consent Process and outcome.

Express Consent means direct, explicit agreement to undergo a Treatment/Procedure, given either verbally or in writing.

Formal Patient a Patient detained in a designated mental health facility under two admission certificates or two renewal certificates, in accordance with the Mental Health Act.

Guardian means, where applicable:
For a Minor:
   a) as defined in the Family Law Act
   b) as per agreement or appointment authorized by legislation (obtain copy of the agreement and verify it qualifies under legislation; e.g. agreement between the
Director of Child and Family Services Authority and foster parent(s) under the 
Child, Youth and Family Enhancement Act; or agreement between parents under the 
Family Law Act; or as set out in the Child, Youth and Family Enhancement 
Act regarding Guardians of the child to be adopted once the designated form is 
signed); 
c) as appointed under a will (obtain a copy of the will; also obtain Grant of Probate, if 
possible; 
d) as appointed in accordance with a personal directive (obtain copy of personal directive); 
e) as appointed by court order (obtain copy of court order) (e.g. order according to the 
Child, Youth and Family Enhancement Act.); and 
f) a divorced parent who has custody of the Minor.

For an Adult: 
a) an individual appointed by the Court to make to make decisions on behalf of the Adult 
Patient when the Adult Patient lacks Capacity.

Health Practitioner means an individual who provides Treatment/Procedure(s) within his/her 
scope of practice and position description.

Health Record means the Alberta Health Services legal record of the Patient's diagnostic, 
Treatment and care information.

Informed Consent means the informed agreement of a Patient or Alternate Decision-Maker (if 
applicable) prior to the Patient undergoing a Treatment/Procedure(s) after being provided with 
the relevant information about the Treatment/Procedure(s), its risks and alternatives and the 
consequences of refusal.

Most Responsible Health Practitioner 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 his/her practice.

Patient means all persons who receive or have requested health care or services from Alberta 
Health Services and its health care providers and 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 in which an adult names an Agent(s) or provides instruction regarding 
his/her 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.
Specific Decision-Maker means a nearest relative who may be selected from a hierarchy of relatives, or the Office of the Public Guardian, to make a specific decision on behalf of the Patient according to the Adult Guardianship and Trusteeship Act.

Treatment/Procedure means a specific treatment, investigative procedure(s), or series of treatments/procedures planned to manage a clinical condition.

CROSS-REFERENCES

Alberta Health Services Policies and Procedures
- Alberta Health Services Policy: Consent to Treatment/Procedure(s)
- Alberta Health Services Procedure: Consent to Treatment/Procedure(s): Adults with Capacity
- Alberta Health Services Procedure: Consent to Treatment/Procedure(s): Minors/Mature Minors
- Alberta Health Services Procedure: Consent to Treatment/Procedure(s): Formal Patients and Persons Subject to Community Treatment Orders under the Mental Health Act
- Alberta Health Services Procedure: Consent to Treatment/Procedure(s): Human Tissue and Organ Donation
- Alberta Health Services Policy: Transmission of Information by Facsimile or Electronic Mail

- Alberta Health Services Forms
  - Consent to Specific Treatment/Procedure(s) (#09741)

- Legislation
  - Adult Guardianship and Trusteeship Act
  - Health Professions Act
  - Human Tissue and Organ Donation Act
  - Mandatory Testing and Disclosure Act
  - Mental Health Act
  - Personal Directives Act
  - Public Health Act

REVISIONS
October 31, 2010
If you have any questions or comments regarding the information in this procedure, please contact the Clinical Policy Department at clinicalpolicy@albertahealthservices.ca. The Clinical Policy website is the official source of current approved clinical policies, procedures and directives.