



TITLE

CONSENT TO TREATMENT/PROCEDURE(S): MINORS / MATURE MINORS

SCOPE

Provincial

DOCUMENT #

PRR-01-03

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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PARENT DOCUMENT TITLE, TYPE AND NUMBER

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

SCHEDULED REVIEW DATE

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.

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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 identify the appropriate actions to be taken during the informed consent process for **mature minors** or **legal representatives** acting on behalf of **minor** patients.

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 A patient under the age of 18 years is presumed to be a minor patient without **capacity**.
- 1.2 This presumption can be rebutted and the minor patient may be able to provide consent, if the minor patient is assessed and deemed a mature minor.
 - a) If there is evidence indicating that the minor patient may be a mature minor, the **most responsible health practitioner (MRHP)** shall conduct the mature minor assessment by asking questions in order to determine whether the minor patient is a mature minor. This may include determining whether or not the minor has the intelligence and maturity to

provide consent for a **treatment/procedure(s)** without the input of their legal representative. Factors of assessment may include but are not limited to:

- (i) age;
 - (ii) intelligence;
 - (iii) maturity;
 - (iv) seriousness of health care treatment; and
 - (v) freedom from parental control.
- b) The outcome of the mature minor assessment shall be documented in the patient's **health record**.

2. Who May Give Informed Consent

2.1 Mature Minors:

- a) A mature minor may provide **informed consent** to accept or refuse the treatment/procedure(s).
- b) A mature minor's legal representative cannot override the mature minor's decision.
- c) A court order or the operation of certain legislative provisions may override the mature minor's decision regarding the treatment/procedure(s).

2.2 Minor Patient's Legal Representative:

- a) If the minor patient is not considered to be a mature minor, their legal representative may provide informed consent or refuse to provide informed consent to the treatment/procedure(s) for the minor patient. This is most often their legally identified parent or **guardian**.
 - (i) As per the *Child, Youth and Family Enhancement Act* Section 2 (d), a child who is capable of forming an opinion on matters affecting that child, is entitled to express those opinions and have them be considered by those making treatment/procedure(s) decisions.
 - (ii) If there are reasonable grounds to believe a child is neglected by their parent or guardian as per the *Child, Youth and Family Enhancement Act*, they may be deemed in need of intervention. In this case refer to Section 2 of the *Child, Youth and Family Enhancement Act*.

- b) A court order or the operation of certain legislative provisions may override a minor patient's legal representative's decision(s) regarding a treatment/procedure(s).
- c) For clarity, the following are examples of persons who may not consent to treatment/procedure(s) for the minor unless they are the minor patient's legal representative:
 - (i) step-parent;
 - (ii) adult who is an **adult interdependent partner** of the parent;
 - (iii) grandparent;
 - (iv) the parent's girlfriend or boyfriend;
 - (v) family friend or neighbour; or
 - (vi) nanny/babysitter.
- d) Where the legal representative does not have the capacity to consent to treatment/procedure(s) for the minor patient, the MRHP shall report this to the Director of Child and Family Services Authority and informed consent to the treatment/procedure(s) may be obtained from the Director of Child and Family Services Authority or other authorized individual according to the *Child, Youth and Family Enhancement Act*.

3. Disagreement Between Legal Representatives

- 3.1 Where the MRHP is aware that the legal representatives disagree regarding the consent to a particular treatment/procedure(s) for the patient, the legal representatives should be encouraged to come to a consensus.
- 3.2 Where agreement between the legal representatives cannot be reached, the treatment/procedure(s) cannot proceed without direction from the Court.

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

- 4.1 A mature minor or legal representative may refuse a treatment/procedure(s) or withdraw previously given informed consent, subject to the following exception:
 - a) In accordance with obligations under the *Child, Youth and Family Enhancement Act*, if consent for essential medical, surgical, or other remedial treatment/procedure(s) necessary for the health or well-being of the minor patient is refused or withdrawn by the mature minor or the minor's legal representative, the MRHP shall report this to the Director of Child and Family Services.

- b) A Director of a Child and Family Services Authority may seek a court order to authorize the treatment/procedure(s) under the *Child, Youth and Family Enhancement Act*.
- c) A refusal or withdrawal of consent may be overridden by a warrant, subpoena, court order, or by applicable legislation.
- 4.2 A mature minor or legal representative 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 mature minor or legal representative 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 mature minor or legal representative.

5. Exceptions to Informed Consent

5.1 Emergency Health Care Exception:

- a) In emergency situations where a mature minor or legal representative is unable to provide informed consent, emergency treatment/procedure(s) may be provided by a **MRHP**, as long as the following criteria are met:
- (i) the mature minor or minor has an illness or injury and delaying treatment/procedure(s) would pose a serious and immediate risk to their life or health; and
- there is no knowledge that the patient would have objected to the treatment/procedure(s); or
 - if there is knowledge that the mature minor or legal representative would have objected to the treatment/procedure(s), the Director of a Child and Family Services Authority has been contacted and has obtained a court order.
 - If a Physician is not available, a Nurse Practitioner or Registered Nurse may initiate emergency health care as per their scope of practice.
- b) The MRHP shall document that an emergency situation exists by completing the relevant section of the AHS *Emergency Health Care: Documentation of Exception to Consent* Form. In all possible situations, a second Physician or MRHP shall confirm the existence of the emergency situation, although it is recognized that in rural settings there may not always be a second Physician available.

- (i) Resident Physicians are not permitted to provide a written opinion to confirm the criteria for emergency health care.
 - c) The details of the emergency situation and all treatment/procedure(s) decisions shall be documented in the patient's health record. All reasonable efforts shall be made to contact the patient's legal representative to advise that emergency treatment/procedure(s) was provided.
 - d) The Emergency Health Care Exception is only valid during the emergency situation. All future treatment/procedure(s) provided outside of the emergency situation shall require informed consent.
- 5.2 Exceptional Circumstances:
- a) The requirement for informed consent may be overridden by a warrant, subpoena, court order or applicable legislation (e.g., a review panel's treatment order under the *Mental Health Act*, orders under the *Public Health Act*, orders under the *Mandatory Testing and Disclosure Act*, etc.).

DEFINITIONS

Adult interdependent partner means two adults who have lived in a relationship of interdependence:

- a) for a continuous period of not less than three (3) years;
- b) with some permanence if there is a child of the relationship by birth or adoption; or
- c) there exists an interdependent partner agreement between the two.

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.

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 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.

Health record means the collection of all records documenting individually identifying health information in relation to a single person.

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.

Legal representative means the following in relation to a minor, as applicable:

- a) guardian; or
- b) nearest relative as defined in the *Mental Health Act* (Alberta), who has the authority to consent to treatment for a minor formal patient or minor who is subject to a Community Treatment Order.

Mature minor means a person aged less than 18 years, who has been assessed and determined as having the intelligence and maturity to appreciate the nature, risks, benefits, consequences, and alternatives of the proposed treatment/procedure(s), including the ethical, emotional, and physical aspects.

Minor means a patient aged less than 18 years.

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.

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).

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): Adults with Impaired Capacity and Adults who Lack Capacity Procedure (#PRR-01-02)*
 - *Consent to Treatment/Procedure(s): Deceased Donation of Human Organs and Tissues Policy (#PRR-01-05)*
 - *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:
 - *Child, Youth and Family Enhancement Act (Alberta)*
 - *Health Professions Act (Alberta)*
 - *Mandatory Testing and Disclosure Act (Alberta)*
 - *Mental Health Act (Alberta)*
 - *Protection of Children Abusing Drugs Act (Alberta)*
 - *Public Health Act (Alberta)*

VERSION HISTORY

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