Title

CONSENT TO TREATMENT/PROCEDURE(S)
FORMAL PATIENTS AND PERSONS SUBJECT TO COMMUNITY TREATMENT ORDERS UNDER THE
MENTAL HEALTH ACT

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October 31, 2012

SPONSOR
Quality and Service Improvement
Senior Physician Executive

CATEGORY
Patient Rights and Responsibilities

If you have any questions or comments regarding the information in this procedure, please contact the Clinical Policy Department at clincialpolicy@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 individuals who are either Formal Patients, or persons subject to Community Treatment Orders under the Mental Health Act; both categories of individuals are considered to be Patients in the context of the AHS Consent to Treatment/Procedure(s) Policy and Procedures. This procedure will address:

1. Who may give consent
2. Consent is required
3. Exceptions to consent
4. Accountability for obtaining consent
5. Consent Process
6. Providing relevant information
7. Documentation of Consent Process
8. Duration of consent
9. Withdrawal/refusal of consent of a Formal Patient
10. Withdrawal/refusal of consent of a person subject to a Community Treatment Order

11. Withdrawal/refusal of consent by a Guardian or Legal Representative for a Minor

12. Withdrawal/refusal of consent by a Patient for blood testing

APPLICABILITY
Compliance with this policy is required by all AHS employees, members of the medical and midwifery staffs, students, volunteers, and other persons acting on behalf of AHS (including contracted services providers as necessary). This policy does not limit any legal rights to which you may otherwise be entitled.

PROCEDURE
1. Who May Give Consent

1.1 A Formal Patient or person subject to a Community Treatment Order is presumed to have Capacity, and is mentally Competent and able to make Treatment decisions until the contrary is determined.

1.2 If a Formal Patient or person subject to a Community Treatment Order requires emergency health care that is different than Control (refer to section 3.1 of this procedure), the Most Responsible Health Practitioner should refer to the Alberta Health Services Consent to Treatment/Procedure(s) procedures for: Adults with Capacity, Adults with Impaired Capacity and Adults who lack Capacity, Minors and Mature Minors, as applicable.

1.3 In accordance with the Mental Health Act, if a Formal Patient or person subject to a Community Treatment Order is not mentally Competent to provide consent to a Treatment/Procedure, treatment decisions can be made on their behalf by an Adult who is apparently mentally Competent, and willing to make the decisions and is:

   a) the Agent of that Patient;
   b) the Guardian of that Patient; or
   c) where there is no Agent or Guardian available, willing to act, or able to be contacted, the Patient’s Nearest Relative as defined in the Mental Health Act:

      (i) in the following ranked order, the adult person first listed in the following paragraphs, relatives of the whole blood being preferred to relatives of the same description of the half-blood, and the elder or eldest of two or more relatives being preferred, regardless of gender:

         • spouse or adult interdependent partner;
         • son or daughter;
         • father or mother;
         • brother or sister;
         • grandfather or grandmother;
• grandson or granddaughter;
• uncle or aunt; or
• nephew or niece

OR

(ii) any adult person the Alberta Health Services Board designates in writing to act as Nearest Relative if there is no Nearest Relative within any description as above, or if, in the opinion of the Alberta Health Services Board, the Nearest Relative would not act or is not acting in the best interest of the Formal Patient or the person subject to a Community Treatment Order.

1.4 According to the Adult Guardianship and Trusteeship Act and its regulations, Specific Decision-Makers and Co-Decision-Makers as defined in that legislation have no decision making authority for Formal Patients or persons subject to Community Treatment Orders unless that individual is the Patient’s Agent, Guardian or Nearest Relative as defined under the Mental Health Act.

1.5 In accordance with the Mental Health Act in a non-emergency health care situation involving a Formal Patient or person subject to a Community Treatment Order who is not Competent, and if there is no Agent, no Guardian, and no Nearest Relative, then the Office of the Public Guardian should be contacted.

1.6 In accordance with the Mental Health Act, Agents or Nearest Relatives shall not exercise decision-making authority unless they:

a) have been in personal contact with the Formal Patient or the person who is subject to a Community Treatment Order over the preceding 12-month period;

b) are willing to assume the responsibility of making treatment decisions; and

c) make a statement in writing certifying their relationship to the Formal Patient or the person subject to a Community Treatment Order and confirming their willingness to make decisions (see Consent Form for Formal Patients and Persons Subject to Community Treatment Orders).

1.7 Under the Mental Health Act, all decisions made by Agents or Nearest Relatives on behalf of Formal Patients or persons subject to Community Treatment Orders should be done so in that person’s best interest. The following is considered when determining if decisions are in the Patient’s best interest:

a) whether the mental condition of the Patient will be, or is likely to be improved by the treatment;

b) whether the Patient’s condition will deteriorate or is likely to deteriorate without the treatment;

c) whether the anticipated benefit from the treatment outweighs the risk of harm to the Patient; and

d) whether the treatment is the least restrictive and least intrusive treatment that meets the requirements outlined in the previous three statements.
1.8 All decisions made by Guardians on behalf of Adult Formal Patients or Adult persons subject to Community Treatment Orders should be made in that person’s best interest; however different considerations regarding the Patient’s best interest apply under the Adult Guardianship and Trusteeship Act.

1.9 There are additional legislative considerations if the Patient is a Minor and the treatment necessary for their health or wellbeing is being refused (or consent is being withdrawn) as outlined in section 11 of this procedure.

1.10 There are additional considerations if the Agent, Guardian or Nearest Relative is making decisions that are not considered to be in the Patient’s best interest:

a) where the decision-maker is the Adult Patient’s Agent or Guardian, consideration should be given to contacting the Office of the Public Guardian and/or seeking legal advice;

b) if the decision-maker for the Adult or Minor Patient is a Nearest Relative and making decisions that are not considered to be in the Patient’s best interest, consideration should be given to whether someone else should be appointed as the Nearest Relative in accordance with the Mental Health Act and/or whether legal advice should be sought.

2. Consent is required

Consent for Treatment/Procedure(s) is required with the exceptions outlined in Section 3 of this procedure.

3. Exceptions to consent

3.1 Section 30 of the Mental Health Act permits Control of a Formal Patient or person subject to a Community Treatment Order without their consent to prevent serious bodily harm to that person or others. The use of force (mechanical or by means of medication), must be as minimal as is reasonable, having regard for the person’s physical and mental condition.

3.2 In exceptional circumstances the requirement for Informed Consent may be overridden by a court order or applicable legislation (e.g. a treatment order issued under the Mental Health Act).

4. Accountability for obtaining consent

4.1 The accountability for obtaining Consent for Formal Patients or persons subject to Community Treatment Orders, shall rest with the Most Responsible Health Practitioner who is providing the specific Treatment/Procedure(s).

4.2 The Most Responsible Health Practitioner remains accountable for the Consent Process, although one or more Health Practitioners may be involved in the delivery of the Treatment/Procedure(s).
5. Consent Process

5.1 If a Patient is considered Competent and consents to the proposed Treatment/Procedure(s), he/she will be treated.

5.2 The provision of consent, and determination of Competency, must relate to a specific Treatment/Procedure or plan of Treatment/Procedure(s).

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

5.4 A Patient may be Competent even if they are unable to communicate verbally.

5.5 In accordance with the Mental Health Act, a physician who is of the opinion that a Formal Patient is not mentally Competent to make decisions about their Treatment/Procedure(s), shall complete and file with the Alberta Health Services Board (or delegate) a Form 11 – “Certificate of Incompetence to Make Treatment Decisions”. There must be clear written reasons for the opinion that the Formal Patient is not Competent to make treatment decisions. The Formal Patient and their Agent or Guardian, if any, and, unless the Formal Patient objects, their Nearest Relative, must be given a copy of the Form 11 and written notice that the Formal Patient is entitled to have the physician’s opinion reviewed by a review panel.

5.6 If there is an application to the review panel to review the physician’s opinion that the Formal Patient is not mentally Competent to make treatment decisions, under the Mental Health Act, no one may act on the physician’s opinion of mental incompetence until the outcome of the application to the review panel.

5.7 Health Practitioners have a duty to facilitate communication with the Patient by any means that enables the Patient to be understood; this includes the Health Practitioner addressing 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.

5.8 The Patient shall be given the opportunity to ask questions and to receive understandable answers.

5.9 If the Patient is unable to understand the discussion or to read the Consent Form (if applicable), 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.

5.10 The Most Responsible Health Practitioner may allow, at the Patient’s request, his/her spouse, relatives or friends to accompany the Patient and offer their assistance to help the Patient to understand or demonstrate an understanding of the information provided.

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5.11 The ability to provide consent rests solely with the Patient; the discussion of information leading to the decision being made is a shared process between the Patient, and the Most Responsible Health Practitioner.

5.12 The Most Responsible Health Practitioner should not, as part of routine practice, ask the Patient to sign a Consent Form after they have been sedated for a Treatment/Procedure as this may invalidate the consent.

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

5.14 Consent will be considered valid for a Patient when the Most Responsible Health Practitioner is of the opinion that the Patient understands the purpose, nature, risks, benefits and alternatives, consequences of the proposed Treatment/Procedure(s).

6. Providing relevant information

The Most Responsible Health Practitioner shall provide the Patient, or ensure the Patient has received, the information that a reasonable person would require to understand the proposed Treatment/Procedure and to make an informed decision including, but not limited to, information about:

a) the condition for which the Treatment/Procedure(s) is proposed;
b) the nature of the proposed Treatment/Procedure(s), including “basket(s)”of Treatment/Procedure(s) where clinically indicated and approved;
c) 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 they would want or his/her treatment decisions, the Most Responsible Health Practitioner is responsible for addressing those particular circumstances with further information as appropriate);
d) alternatives to the proposed Treatment/Procedure(s); and
e) the likely consequences of not undertaking the Treatment/Procedure(s).

7. Documentation of Consent Process

7.1 Consent may be Express or Implied, written or verbal as determined appropriate by the Most Responsible Health Practitioner.

7.2 Documentation of the discussion of consent with the Patient is highly recommended.

7.3 The Most Responsible Health Practitioner is responsible for ensuring appropriate documentation of the Consent Process and outcomes on the Patient’s Health Record. Specifically, the following outcomes shall be documented:

a) agreement to the Treatment/Procedure(s);
b) refusal of the Treatment /Procedure(s) - see sections 9,10,11,12 of this procedure;

c) withdrawal of consent previously given - see sections 9,10,11,12 of this procedure.

7.4 In accordance with the Mental Health Act, where a Treatment decision is being made for a Formal Patient or a person subject to a Community Treatment Order by an Agent or Nearest Relative, the Consent Form for Formal Patients and persons subject to Community Treatment Orders must be signed.

7.5 Where written consent is deemed necessary, the Most Responsible Health Practitioner shall ensure a Consent Form evidencing consent to the Treatment/Procedure is completed and signed. The Most Responsible Health Practitioner shall ensure that the name of the specific Treatment/Procedure is completed; abbreviations shall not be used on a Consent Form.

7.6 Consent may be obtained in the Most Responsible Health Practitioner’s office if applicable. Any completed Consent Forms shall then be forwarded to the applicable Alberta Health Services setting where the Patient will be receiving the Treatment/Procedure.

7.7 Completed Consent Forms required for Treatment/Procedure(s) may be faxed or scanned [Ref: Alberta Health Services Policy - Transmission of Information by Facsimile or Electronic Mail]. Where possible, and at the earliest opportunity, the original Consent Form shall be obtained and placed on the Patient’s Health Record.

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

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

7.10 Written consent should be witnessed. Any person, other than a relative of the Patient, the Most Responsible Health Practitioner or the interpreter for the Patient, may witness the signing of a Consent Form.

7.11 Before acting as a witness, the witness shall confirm the Patient’s identity or if the person signing is not the Patient, request to see a form of identification. Witnessing a Consent Form indicates only that the witness observed the Consent Form being signed and is not evidence of the Consent Process.

7.12 In the event that the Patient, 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.

7.13 The Consent Form shall be added to the Patient’s Health Record.
8. Duration of consent

New consent shall be obtained 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 or procedure originally planned or a refusal regarding the involvement of particular individuals in the treatment or procedure (i.e. medical trainees).

9. Withdrawal/refusal of consent of a Formal Patient

9.1 A Formal Patient (or their Agent, Guardian or Nearest Relative if applicable) may, at any time, withdraw/refuse consent to a Treatment/Procedure; however, there are additional considerations that apply (as outlined in section 1.10) if decisions are being made on behalf of a Formal Patient that are not considered to be in the patient’s best interest.

a) It is important that the Formal Patient (or their Agent, Guardian or Nearest Relative if applicable) understands the consequences of withdrawing/refusing consent for the Treatment/Procedure(s). The Most Responsible Health Practitioner must explain the risks of not proceeding with the Treatment/Procedure(s). This discussion and the withdrawal/refusal of consent shall be documented on the Formal Patient’s Health Record. The withdrawal/refusal of consent shall be noted on the Consent Form if a Consent Form had been signed by the Formal Patient. Information documented in the Patient’s Health Record may also include:

- a summary of the information that was provided about the Treatment/Procedure;
- the reasons for withdrawing/refusing consent, if known; and
- the expected outcomes of not receiving the Treatment/Procedure.

b) In accordance with the Mental Health Act if consent for a Formal Patient is refused or withdrawn by the Formal Patient, Agent, Guardian or Nearest Relative, the physician may respect the consent withdrawal/refusal or may decide to complete a Form 12 and request a Treatment order from the review panel. Treatment may not go ahead without a Treatment order authorized by the review panel under these circumstances. The review panel will only order Treatment if it is satisfied that the physician has examined the Formal Patient and that Treatment is in the Formal Patient’s best interest.

c) Consent may be provided again by the Formal Patient (or their Agent, Guardian or Nearest Relative if applicable) at any time following an Informed Consent discussion.
9.2 In accordance with the *Mental Health Act*, if the attending physician is of the opinion that a Formal Patient is not Competent to make Treatment decisions and the Formal Patient objects to Treatment, the Treatment, but the Agent or Nearest Relative has consented to the Treatment, Treatment shall not be given unless a second Physician is also of the opinion that the Formal Patient is not mentally Competent to make Treatment decisions.

10. **Withdrawal/refusal of consent by a person subject to a Community Treatment Order:**

10.1 Under the *Mental Health Act*, a person subject to a Community Treatment Order (or a person on their behalf) may apply to a review panel for the cancellation of the Community Treatment Order by submitting Form 12. The review panel will hear evidence to determine whether the certain criteria under the *Mental Health Act* is met; however the Patient’s consent to the Community Treatment Order at the time of the hearing is excluded from the review panel’s consideration.

10.2 If a person subject to a Community Treatment Order is not in compliance with the treatment or care set out in the Community Treatment Order, an apprehension order may be issued by a psychiatrist or Designated Physician. Prior to issuing an apprehension order, the *Mental Health Act* requires that the psychiatrist or Designated Physician must be satisfied that reasonable efforts have been taken to inform the person that there is non-compliance and there is a need for compliance. Reasonable assistance must be provided to enable the person to comply with the treatment or care in the Community Treatment Order. The person subject to the Community Treatment Order must be advised of the risks and consequences of non-compliance, which include apprehension, assessment, and the possibility of becoming a Formal Patient.

The psychiatrist or Designated Physician shall document relevant discussions (including the information provided and the Patient’s stated reasons for non-compliance, if any) in the Patient’s Health Care Record.

11. **Withdrawal/refusal of consent by a Guardian or Legal Representative for a Minor**

In accordance with obligations under the *Child Youth and Family Enhancement Act*, if consent for essential medical, surgical or other remedial Treatment necessary for the health or well-being of the Minor Patient is refused or withdrawn, the Director of Child and Family Services Authority must be notified forthwith by the Most Responsible Health Practitioner or delegate.

12. **Withdrawal/refusal of consent by a Patient for blood testing**

A Patient 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 and the Patient refuses to consent to blood testing, the Health Practitioner will immediately contact Alberta Health Services Workplace Health and Safety.
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 are 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 Specific Decision-Maker, a Minor’s Legal Representative, a Guardian, a Nearest Relative in accordance with the Alberta Mental Health Act, or an Agent in accordance with a Personal Directive or a person designated 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, 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.

Competent/Competency under the Mental Health Act means the person is able to understand the subject matter relating to the decisions and able to appreciate the consequences of making the decisions.

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

Consent Process is a discussion or series of discussions and interactions between the Most Responsible Health Practitioner and Patient or Alternate Decision Maker (if applicable) including: i) the establishment of Capacity, ii) the provision of relevant information, iii) the verification of understanding, iv) the decision-making and v) documentation of the consent process and outcome.
Control means the authority under the Mental Health Act to control a person without the person’s consent to the extent necessary to prevent serious bodily harm to the person or to another person by the minimal use of such force, mechanical means or medication as is reasonable, having regard to the physical and mental condition of the person.

Designated Physician means a physician designated pursuant to section 9.7 of the Mental Health Act.

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

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.

Guardian means where applicable:

For a Minor:

a) as defined in the Family Law Act (see Appendix A);
b) as per agreement or appointment authorized by legislation (obtain copy of agreement and verify qualifies under legislation) (e.g. agreement between a 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 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 copy of 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 pursuant to 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 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.

Implied Consent means consent inferred from the Patient’s actions and surrounding circumstances.

Informed Consent means the informed agreement of a Patient prior to the Patient undergoing a Treatment/Procedure, after being provided with the relevant information about the Treatment/Procedure(s), its risks, and alternatives and the consequences of refusal.
Legal Representative means the following in relation to a Minor, as applicable:

a) Guardian;

b) Nearest Relative as defined in the Mental Health Act who has the authority to consent to Treatment for a Minor Formal Patient or Minor who is subject to a Community Treatment Order

Minor means a person aged less than eighteen (18) years.

Most Responsible Health Practitioner means the Health Practitioner who has responsibility and accountability for the Treatment/Procedure 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 within the scope of his/her practice.

Nearest Relative in the Mental Health Act and in this Procedure means, with respect to a Formal Patient or a person who is subject to a Community Treatment Order:

a) the Adult person first listed in the following list, relatives of the whole blood being preferred to relatives of the same description of the half-blood, and the elder or eldest of two or more relatives being preferred, regardless of gender:

- spouse or adult interdependent partner
- son or daughter
- father or mother
- brother or sister
- grandfather or grandmother
- grandson or granddaughter
- uncle or aunt
- nephew or niece

OR

b) any adult person the Alberta Health Services Board designates in writing to act as Nearest Relative if there is no Nearest Relative within any description as above, or if, in the opinion of the Alberta Health Services Board, the Nearest Relative would not act or is not acting in the best interest of the Formal Patient or the person subject to a Community Treatment Order.

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 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 required to manage a clinical condition.

CROSS-REFERENCES

Appendices

- Appendix “A” - Overview of the definition of “Guardian” as set out in section 20 of the Family Law Act.

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 Impaired Capacity and Adults who Lack Capacity
- Alberta Health Services Procedure: Consent to Treatment/Procedure(s): Minors/Mature Minors
- 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 Form for Formal Patients and Persons Subject to Community Treatment Orders
- Consent to Specific Treatment/Procedure (#09741)
- Community Treatment Decisions Consent (#09565)
- Links to Forms 11, 12, 19, 20, and 23 under MHA

Legislation

- Adult Guardianship and Trusteeship Act
- Child Youth and Family Enhancement Act
- Family Law Act
- Mental Health Act
- Public Health Act
- Human Tissue and Organ Donation Act
- Personal Directives Act

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<td>CONSENT TO TREATMENT/PROCEDURE(s) FORMAL PATIENTS AND PERSONS SUBJECT TO COMMUNITY TREATMENT ORDER UNDER THE MENTAL HEALTH ACT</td>
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- *Health Professions Act*

**Provincial Standards**

- College of Physicians and Surgeons of Alberta: Standards of Practice

**REVISIONS**

August 1, 2011

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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.
The following is an overview of the definition of “Guardian” as set out in section 20 of the Family Law Act

A Guardian is a parent if:

1. The Parent has acknowledged that he or she is the Parent of the child; AND
2. Has demonstrated an intention (see guidelines below) to assume the responsibility of a Guardian in respect of the child within one year of either becoming aware of the pregnancy or becoming aware of the birth.

Parentage (who is a parent):
There are three combinations of parent-child relationships recognized under the Family Law Act:

<table>
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<tr>
<th>Children conceived without assisted reproduction:</th>
<th>Children conceived with assisted reproduction and whose birth mother is the intended parent:</th>
<th>Children who were conceived with assisted reproduction and whose birth mother is a surrogate:</th>
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<tr>
<td>Birth mother and Biological Father are the Parents, except in the case of adoption where one would refer to the adoption Court Order. If adoption is in progress, contact Clinical Legal Services. *see below for who is presumed to be the biological father.</td>
<td>The birth mother will be considered to be one parent.</td>
<td>Until there is a Court Order declaring parentage, the surrogate remains the only legal parent.</td>
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<tr>
<td>The other parent will depend on how the Embryo was created: 1. If the embryo was created from the intended male parent’s sperm, then the other legal parent is the intended male parent. 2. If the embryo was created from donated sperm, then the person who was married to or in a conjugal relationship with the birth</td>
<td></td>
<td>Once the surrogate has relinquished her parental rights, a Court Order will declare the proper legal parents.</td>
</tr>
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*see below for who is presumed to be the biological father.
If there is a dispute over parentage, a court order may be sought to declare that someone is or is not a parent of a particular child. For Adoptions, a Court Order will be provided.

**INTENTION**

*May be shown by any of the following:*

1. Being married to the other Parent at the time of the birth of the child;
2. Being married to the other Parent after the birth of the child;
3. Being married to the other Parent that, within 300 days before the birth of the child ended by death, decree of nullity or judgment of divorce;
4. Being an adult Interdependent Partner of the other Parent at the time of birth of the child;
5. Being an adult Interdependent Partner with the other Parent after the birth of the child;
6. Having cohabitated with the other Parent for at least 12 consecutive months during which time the child was born;
7. Having entered into an Agreement with the other Parent to be a Guardian under the *Family Law Act*;
8. Having carried the pregnancy to term (for the birth mother);
9. Where the other Parent is the birth mother, voluntarily providing or offering to provide support for the birth mother during or after her pregnancy, not by court order;
10. Voluntarily providing or offering to provide reasonable direct or indirect financial support for the child;
11. Court Order (Court may find other evidence to be that of Intention);
12. Where the child is born as a result of assisted reproduction, being a Parent of the child under section 8.1 (see middle column under Parentage above).

**BIOLOGICAL FATHER**

*The following will be presumed to be the biological father where the child was born without assisted reproduction (see first column under Parentage above):*

**The male person who:**

1. Was married to the birth mother at the time of the child’s birth;
2. Was married to the birth mother by a marriage that within 300 days before the birth of the child ended by: death; decree of nullity; or judgment of divorce;
3. Married to the birth mother after the child’s birth and has acknowledged that he is the father;

4. Cohabitated with the birth mother for at least 12 consecutive months during which time the child was born and he has acknowledged that he is the father;

5. Cohabitated with the birth mother for at least 12 consecutive months and the period of cohabitation ended less than 300 days before the birth of the child;

6. Is registered as the parent of the child at the joint request of himself and the birth mother under the Vital Statistics Act, or under similar legislation in a province or territory other than Alberta;

7. Has been found by a court of competent jurisdiction in Canada to be the father of the child for any purpose.

**Note:** Two people *cannot* be presumed to be the biological father. If that is the case, then no one will be presumed to be the biological father.