



TITLE

**MANAGED RISK AGREEMENT**

SCOPE

Provincial Continuing Care

DOCUMENT #

PS-102-01

APPROVAL AUTHORITY

Vice President, System Innovations & Programs

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**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 provide a consistent approach to support **patients, families** and **health care providers** in **continuing care** settings when a patient chooses to live at risk.
- To align with AHS *Consent to Treatment/Procedure(s)* Policy and Procedures while reflecting the needs of patients in Continuing Care.
- To recognize the importance of family supporting the patient in decision making, and welcome their involvement based on the wishes of the patient.
- To recognize that health care providers have a responsibility to support family involvement as determined by the patient throughout the care planning process.

## PRINCIPLES

Patients are entitled to personal autonomy and the right to make informed choices; to take responsibility and control of their lives without blame or punishment, even when certain choices may expose them to risk. The risk may vary in magnitude, degree of harm, imminence, and likelihood.

Managed risk does not constitute a waiver of liability nor does it include instances where a **behaviour agreement** is more appropriate.

Managed risk is a process of informed decision-making. If a patient chooses to live at risk, a managed risk agreement may be negotiated between the health care team and, as appropriate, the **accountable leader**.

A managed risk agreement may be implemented to ensure that the patient understands the potential risk(s) and accepts the possible negative health care outcomes associated with the risk; in addition to providing direction to the health care team regarding the patient's choice to live at risk.

As per the Continuing Care Health Service Standards, risk management is a systematic identification, evaluation, and mitigation of potential risk for the purposes of recognizing the patient's right to live at risk and to respect choice.

A managed risk agreement is a process that captures health care team discussions, recommendations, and interventions when a patient's choice puts the patient at risk and the health care team can accommodate the choice through accepting an alternate intervention than the one they advised, or through no intervention at all (e.g. a patient with an impaired swallow who can independently feed themselves chooses to eat a regular diet).

Managed risk agreements are not appropriate when a risk to others has been identified (e.g. risk to staff, residents, and/or the organization). In these instances, a consult with legal advisors shall be sought.

A managed risk agreement shall not circumvent any municipal bylaw, provincial, or federal law and is only initiated when there is a perceived need on a case-by-case basis for a specific, narrowly defined issue.

## 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. Points of Emphasis

- 1.1 Patient decision-making capacity is presumed unless there is reason to believe otherwise or evidence to the contrary, at which point capacity shall be assessed in accordance with the AHS *Consent to Treatment/Procedure(s)* Policy suite.
- 1.2 Refer to AHS *Consent to Treatment/Procedure(s)* Policy suite for information on the process of informed consent as it relates to Managed Risk Agreement (e.g., intact capacity vs. lack of capacity).
- 1.3 **Alternate decision-makers** such as **guardians** and agents can enter into a Managed Risk Agreement on behalf of a patient who lacks capacity, and a co-decision maker can enter into a Managed Risk Agreement in collaboration with a patient.
- 1.4 A **specific decision-maker** shall not enter into a Managed Risk Agreement on behalf of a patient who lacks capacity.

- 1.5 Patients falling under the Mental Health Act are beyond the scope of this guideline.

## 2. Identification of Risk

- 2.1 When a patient chooses to participate in an activity contrary to their care plan and/or care recommendations, the **case manager** shall ensure an assessment of risk is completed for the purpose of identifying if the actions could result in a negative health care outcome for the patient.
- 2.2 An assessment of risk shall include a review of the patient's health record, consideration of the patient's previously expressed preferences, and pertinent assessments and recommendations of the health care team.
- 2.3 When risk is identified, the case manager shall initiate a health care team conference that shall include but not be limited to:
- a) identification of relevant assessments, recommendations and reasons for the recommendations, as applicable to the identified risk;
  - b) identification of the patient's choice and reasons for choosing alternatives;
  - c) identification of the potential risks, consequences and possible negative outcomes should the recommendations not be followed by the patient;
  - d) identification of possible risk management/mitigation strategies to support patient health and safety while balancing patient autonomy; and
  - e) providing information regarding resources, services and supports available to the patient with the Continuing Care program or setting.
- 2.4 In consideration of impact to other aspects of the patient's care (e.g., advance care planning and goals of care designation), and information from activities within Section 2.2 & 2.3 the case manager shall proceed in one of the following ways:
- a) update the care plan and/or care recommendations to reflect the patient's choice; or
  - b) initiate the managed risk agreement when the patient's choice does not align with care plan and/or care recommendations but can be accommodated in the interest of patient autonomy and promotion of quality of life; or
  - c) communicate to the patient and family that the potential risk to the patient is too high to accommodate their choice, and document this discussion in the health record.
- 2.5 If the patient continues to make a choice that cannot be accommodated, the health care team should consider a behaviour agreement.

- 2.6 Where there is continued difficulty negotiating an acceptable balance between respect for patient autonomy and promotion of well-being and safety, consultation with Clinical Ethics and legal advisors, as appropriate, is encouraged.
- 2.7 The case manager and/or accountable leader shall ensure AHS management is notified of complex negotiations or situations where significant risk is identified (e.g., media involvement).

### 3. Managed Risk Agreement Form

- 3.1 When a Managed Risk Agreement is appropriate, the Managed Risk Agreement in Continuing Care Form shall be completed by the case manager.
- 3.2 The following, at minimum, shall be documented on the Managed Risk Agreement in Continuing Care Form:
- a) a summary of the health care team's recommendations and the reasons for the recommendations;
  - b) a summary of the patient's choice and reasons for choosing alternatives to the health care team's recommendations;
  - c) identification of the potential risks, consequences and possible negative health care outcomes should the recommendations not be followed by the patient;
  - d) the risk management/mitigation strategies (to be) implemented;
  - e) expectations of the health care team in assisting the patient, if any.
- 3.3 The Managed Risk Agreement in Continuing Care Form should be dated and signed by the patient or alternate decision-maker.
- 3.4 The Managed Risk Agreement in Continuing Care Form shall be:
- a) updated whenever there is a **significant change in status** relating to the patient's condition or circumstances;
  - b) reviewed at the patient's annual conference; or
  - c) reassessed upon request or need.

### 4. Concerns Resolution

- 4.1 The health care team shall first attempt, through informal negotiation, to resolve any concern to the extent possible given the concern/scenario by consulting with the accountable leader (as appropriate for the care setting).

- 4.2 Formal discussions shall be conducted in accordance with the AHS *Patient Concerns Resolution Policy*, AHS *Patient Concerns Resolution Process Procedure*, and the *Appeal Panel Process Procedure (Continuing Care)*.

## 5. Documentation

- 5.1 Assessment(s) of risk, and the care conference shall be noted in the patient's **health record**, in accordance with documentation requirements in the practice setting.
- 5.2 The patient shall be provided a copy of the completed and signed Managed Risk Agreement in Continuing Care Form.
- 5.3 The original signed Managed Risk Agreement in Continuing Care Form shall be placed in the patient's health record and a copy shall be placed with the patient's care plan.
- 5.4 If the patient is unwilling or unable to sign the Managed Risk Agreement Form, documentation of their unwillingness or inability to sign shall be documented on the patient's care plan.

## DEFINITIONS

**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.

**Accountable leader** means the individual who has ultimate accountability to ensure consideration and completion of the listed steps in the management of the Managed Risk Agreement Guideline. Responsibility for some or all of the components of management may be delegated to the appropriate level responsible administrative leader, but accountability remains at the senior level.

**Behaviour agreement** means an agreement that is established when a patient chooses to engage in behaviours that are believed to put the patient, staff or others at risk of physical or emotional harm.

**Case manager** means a regulated health care professional(s) accountable for case management services for an assigned caseload in continuing care. Primary responsibilities include: assessing client needs, determining service needs, negotiating service options, making service recommendations and referrals, monitoring service delivery, managing reassessment and waitlist and discharge processes, and coordinating care transitions across care settings.

**Continuing care** means an integrated range of services supporting the health and wellbeing of individuals in throughout the streams of home living, supportive living, long-term care, and palliative/hospice or transition services. Continuing care patients are not defined by age, diagnosis or the length of time they may require service, but by their need for care.

**Family-ies** means one or more individuals identified by the patient as an important support, and who the patient wishes to be included in any encounters with the health care system, including, but not limited to, family members, legal guardians, friends and informal caregivers.

**Guardian** means, where applicable:

For a Minor:

a) A guardian as defined by the Family Law Act, 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).

For an Adult:

a) an individual appointed by the Court in accordance with the Adult Guardianship and Trusteeship Act to make 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 Alberta Health Services legal record of the patient's diagnostic, treatment and care information.

**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.

**Significant change in status** means an improvement or decline that affects the patient's health status, that is not self-limited and that requires review or revision of the care plan to ensure that appropriate care is given.

**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.

## REFERENCES

- Alberta Health Services Governance Documents:
  - *Appeal Panel Process Procedure (Continuing Care) (#HCS-146-01)*
  - *Consent to Treatment/Procedure(s) Policy Suite (#PRR-01)*
  - *Patient Concerns Resolution Policy (#PRR-02)*
  - *Patient Concerns Resolution Process Procedure (#PRR-02-01)*
- Alberta Health Services Forms:
  - *Continuing Care Managed Risk Negotiated Agreement Form (#02120)*
- Alberta Health Services Resources:
  - *Continuing Care Case Management Framework and Guidelines*
- Non-Alberta Health Services Documents:
  - *Continuing Care Health Service Standards (Alberta Health)*

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