Michelle Endresz

From: Heidi Chapman on behalf of Amy Tucker
Sent: Friday, November 10, 2023 12:48 PM
To: Amy Tucker
Cc: Heidi Chapman
Subject: CMO BLAST: New Consent Policy and Procedure Go-Live on Monday, November 13!
Attachments: Attending Resident and Fellow education Update on Consent for Invasive Procedure 9Nov23.pdf; C-07 - Informed Consent-Refusal FINAL 5.2023.pdf; 40580 - Consent to Operate.pdf

Importance: High

Sent on behalf of Dr. Jeffrey Albright, Interim Director of Surgical Services…

Effective Monday, November 13, 2023, changes to Upstate's Informed Consent/Refusal policy (C-07) and Consent for Diagnostic, Therapeutic, Invasive Procedure or Surgery Form (40580) will go-live.

Please take a moment to review the attached education, as well as the new policy and consent form.

If you have questions or need any additional information, please reach out to Dr. Jeffrey Albright at albrighj@upstate.edu.

Best,
Amy

Amy Tucker, MD, MHCM
Chief Medical Officer
Associate Dean for Clinical Affairs, Norton College of Medicine

DT40580

UPSTATE
UNIVERSITY HOSPITAL

CONSENT FOR DIAGNOSTIC THERAPEUTIC, INVASIVE PROCEDURE OR SURGERY

Patient Name: _____ MR#: _____

Account #: _____ DOB: _____ Date: _____

1. I give permission to the proceduralist (s) performing the procedure/surgery _____
(Proceduralist (s)

And/or the following proceduralist(s) _____
(Specify Proceduralist(s))

whom are reasonably anticipated to be actually involved in the treatment, procedure

or surgery to be performed upon _____ the following procedure or surgery:
(state "myself" or name of patient)

_____
(state nature of procedure first in medical terminology then in laymen's terms)

_____

I understand that resident physicians and/or other qualified practitioners who are not identified above may perform important tasks during the surgery or procedure.

2. I understand and it has been explained to me that at this teaching hospital, health care students are routinely part of the treatment team.
3. Initial only if applicable: _____ I have been informed that a health care student may, for educational purposes, perform a vaginal, rectal or genital examination and I give my permission to such examination.
4. The purpose of and the benefit(s) which may be anticipated from the surgery/procedure(s), although not guaranteed, have been explained to me by the qualified proceduralist(s). The main risks and discomforts which may or will result from the surgery/procedure(s), including their probability and severity, have been explained to me. The consequences of not having this surgery/procedure have also been explained to me. The qualified proceduralist has explained the expected difficulties, recovery time, pain management, and restrictions after the test/treatment/procedure/surgery both in the hospital and after discharge.
5. Alternative surgery/procedures, including the alternative of no treatment, have been explained and the potential benefits and risks, including their probability and severity of risks associated with each choice.
6. In addition to the benefits and risks which are or may be involved in the surgery/procedure(s), I also know that there is always the possibility of unforeseen or unanticipated conditions occurring. If this occurs, I understand that the medical personnel will use their judgment with respect to my care and treatment, which may involve performing additional or different procedures from those stated, or otherwise altering the planned course of action. This may include the **unanticipated** need for blood transfusion **and the use of x-rays or other diagnostic or therapeutic measures**. I authorize them to do so.
7. If applicable, I give permission for:
   - The use of moderate sedation medicines. These medicines are given to temporarily decrease the sensation of pain, produce calmness, and a sense of well being and/or pain relief.
   - The use of deep sedation medicines. These medicines cause brief unconsciousness and are administered by a non-anesthesiologist physician.

   I understand that if sedative or analgesic medicines are administered, I will need to be monitored until I am fully awake before being discharged. In addition, I will only be discharged in the care of a responsible adult.
8. If applicable, I consent to the administration of anesthesia and the use of such anesthetics and invasive monitoring as may be deemed advisable in the medical judgment of and under the supervision of an anesthesiologist.
9. I give permission for the disposal of and/or release of any tissue removed to be used for scientific purposes after all necessary diagnostic tests have been completed. I understand that all identifying information will be removed.
10. I give permission for my social security number to be used as required by the FDA Safe Medical Device Act.
11. I have a current **Do Not Resuscitate (DNR)** Order in place. (Check the box) ..... ☐Yes ☐No
    If I checked **yes** and have a DNR Order and I am undergoing a procedure requiring moderate sedation and/or services provided by an anesthesiologist.
    a. I wish to maintain DNR status during my operation/procedure. (Check the box) ..... ☐Yes ☐No
       If Yes, Attending Surgeon or designee must initiate physician to physician communication with Attending Anesthesiologist. **OR**
    b. I wish to discontinue DNR status during my operation/procedure. I understand that my DNR status will be resumed when I am discharged by the Anesthesiology Service. (Check the box) ..... ☐Yes ☐No
    c. Not applicable because I am not having moderate sedation or general anesthesia. ..... ☐N/A

CONTINUED ON BACK

Patient Name: _____ DOB: _____

MR#: _____ Account #: _____

12. For the purpose of medical education, I understand that my condition or the procedure I will have performed is expected by my doctor to be useful for medical education purposes if it is recorded, either through visual and/or audio means, and I have been provided with a full explanation of how it will be recorded and how it will be used, and, I consent to the photography and/or televising audio and/or visual recording of the procedure to be performed provided my identity is not revealed. . . . . ☐Yes ☐No ☐N/A
If I am not being asked at this time to consent to the photography, and/or televising audio and/or visual recording for the purposes of medical education, I understand that if my doctor determines during the procedure that it will be useful, that the recording may be performed at the direction of my doctor but will not be used for any purpose unless I later give my consent, and if I do not give my consent the recording will be immediately destroyed.
13. I consent to the presence of additional non-hospital staff during my surgery as directed by my attending surgeon or anesthesiologist. This may include manufacturer representatives or technicians. **(List names below)**
14. I have been provided with a full opportunity to repeat back what will be done in the procedure, why it will be done, the risks of the procedure, and ask any questions or express any concerns I may have. My questions have been answered and my concerns addressed to my satisfaction. I understand that I may ask for further information and it will be given to me.
15. I have read this entire document and understand its contents. In addition, I have been told that I am free to withdraw any portion of my consent.
16. I have either completed or crossed off and initialed any unacceptable statements above prior to my signing.

For Patients with Limited English Proficiency (LEP) or a Sensory Disability (decreased hearing or vision)

Initials by person reviewing form

☐ Primary Language other than English (including Sign Language) : _____ Initials: _____
Primary Language

Interpreter needed: ☐ Yes ☐ No

Interpretation method: ☐ phone ☐ in person ☐ video

Interpreter Agency: _____ Name of Interpreter: _____ Initials: _____

☐ Blind or low vision patients - consent was read to patient _____ Initials: _____

Other (Patient refused, patient speaks English): _____ Initials: _____

Date	Time	Signature of Patient	Print Name

If consenting party is other than patient:

Date	Time	Signature of Consenting Party	Relationship to Patient

Consent Form Witness:

Date	Time	Signature of Witness	Print Name

Qualified Proceduralist Explaining Procedure:

I attest that I have conducted the informed consent in its entirety with the patient or authorized decision maker.

Date	Time	Proceduralist Explaining Procedure	Print Name

Patient Name: _____ DOB: _____

MR#: _____ Account #: _____

Proceduralist Performing Procedure: Final Attestation

I verify that the patient has been identified. This consent form is complete and has been signed prior to the surgical procedure. I have marked the operative site if applicable and have reviewed pertinent radiographic images. Any images needed for the procedure are available to me in the OR/ procedural area. I have checked that any implants, equipment needed to complete the procedure are available. If this is an operative procedure or if anesthesia is planned, the H&P has been done within 30 days and reviewed within the last 24 hours and updated as necessary and I have written a pre-procedural attending note.

Date	Time	Proceduralist Signature/Title	Print Name

List below all Non University Hospital personnel present in the OR/Procedure Room at the time of surgery/procedure. Inform the patient/patient representative about their presence.

NAME/TITLE	NAME/TITLE

Update on Consent for Invasive Procedure/Surgery and Policy C-07

What is "informed consent"?

- Verbal process, not a written form
- "Patients' rights" document intended to promote self-determination, respect patients' wishes, and encourage informed, rational decision making
- What must be covered for true informed consent
    1. Indications for doing the procedure
    2. Anticipated benefits from doing the procedure
    3. Anticipated risks by doing the procedure
    4. Alternatives to performing the procedure, including doing nothing
    - For #1-4, the risks and burdens associated with each outcome, including the likelihood
    - If resident/fellow/APP to perform important tasks in OR/IR/Endo procedure, should be disclosed to patient, and that it will be under supervision

Who can provide informed consent?

- Patient or an authorized decision-maker (ADM) if patient lacks decision-making capacity

Who can perform verbal informed consent?

- A Qualified Proceduralist can perform verbal informed consent

What is a "Qualified Proceduralist"?

- A "QP" is any individual who has been credentialed to independently perform a procedure at Upstate

Can a resident, fellow, or APP be a QP?

- According to policies C-12 and R-02, if you are a trainee or APP in the Upstate system, you may be credentialed to perform a number of procedures that can be done completely independently. If you have been credentialed, you are able to provide legal verbal (as well as written) informed consent. If you have not been credentialed to do these procedures independently, you cannot perform legal verbal informed consent.
- For a much more limited scope, some fellows and APPs have been credentialed to independently perform procedures in certain locations, such as the OR, Heart and Vascular Center, IR suite, endoscopy suite, etc. This is the exception and not the rule. If you are a resident, it is highly likely that you are not considered to be a QP, and therefore cannot provide legal verbal informed consent for procedures performed in special locations, such as the OR, Heart and Vascular Center, IR suite, endoscopy suite, etc.

Who can perform verbal informed consent for procedures in the OR, IR suite, or endoscopy suite?

- Based on hospital policy, all scheduled cases in the OR, IR suite, Heart and Vascular Center, and endoscopy suite (or similar sites) must be completed by a credentialed attending, or less likely a fellow/APP who has been fully credentialed as a QP to perform procedures in these locations.

- With this requirement, the legal verbal informed consent MUST be performed by a QP credentialed to perform the procedure in these locations.

Who can perform verbal informed consent for procedures going to the OR, IR suite, Heart and Vascular Center, or endoscopy suite IN CASE OF A HIGHLY EMERGENT RED STRIP PROCEDURE?

- In case of a highly emergent life-threatening event where time spent pursuing informed consent would increase the risk of severe morbidity or mortality, verbal informed consent is not required. Therefore, the specifics of the consent form do not apply.

Can informed consent be delegated?

- IC can be delegated only to a QP credentialed to perform procedures independently in the specific location where the procedure is to be done
    - If to be done in OR, Heart and Vascular Center, IR suite, Endoscopy, or similar special locations, verbal IC can primarily only be delegated to another attending (fellow or APP only in situations outlined above).
    - If to be done at bedside, verbal IC can be performed by anyone credentialed by Upstate to perform the procedure independently. This includes attendings, as well as residents/fellows/APP's credentialed by the university to perform these procedures independently.

Who can perform the WRITTEN IC form?

- The written consent form is simply documentation to confirm that the verbal informed consent process has been completed.
- Residents, fellows, APPs, students, and attending providers, *regardless of whether they are QPs*, can fill out the specific procedure to get it ready to sign by the patient, witness, and QP.

Can a resident/fellow/APP/student/attending who is *not* a QP have the patient sign the consent prior to obtaining the VERBAL IC?

- NO! The written consent form is to document that the patient/ADM has received the full informed consent and that she/he/they understands the elements of informed consent. Having the patient document understanding of these elements prior to the discussion makes no sense, and potentially will put you at increased legal risk!!!

If I am not a QP, can I sign the 4th signature line entitled "Qualified Proceduralist Explaining Procedure"?

- NO! The 4th line is ONLY for signature by a QP.

What is the purpose of the "Consent Form Witness"?

- The witness is only documenting on the form that the signature provided by the patient or ADM is that of said person. It is not to witness the consent process or that informed consent has been obtained.

Date Time Signature of Witness Print Name

Qualified Proceduralist Explaining Procedure:

I attest that I have conducted the informed consent in its entirety with the patient or authorized decision maker.

Date Time

OR/IR/Endo : Attending signature (not resident/fellow/APP)

Proceduralist Explaining Procedure Print Name

Proceduralist Performing Procedure: Final Attestation

I verify that the patient has been identified. This consent form is complete and has been signed prior to the surgical procedure. I have marked the operative site if applicable and have reviewed pertinent radiographic images. Any images needed for the procedure are available to me in the OR/ procedural area. I have checked that any implants, equipment needed to complete the procedure are available. If this is an operative procedure or if anesthesia is planned, the H&P has been done within 30 days and reviewed within the last 24 hours and updated as necessary and I have written a pre-procedural attending note

Date Time

OR/IR/Endo: Attending signature (not resident/fellow/APP)

Proceduralist Signature/Title Print Name

UPSTATE UNIVERSITY HOSPITAL

ADMINISTRATIVE MANUAL

Policy Number:	**C-07**	**Approved by:**	**Hospital Officers Leadership Team, Medical Executive Committee**
Issue Date:	**04/1965**	**Applies to:**	**Downtown and Community**
Values: Respect People, Value Integrity		**Page(s): 1 of 22**	

Informed Consent/Refusal

Review Date:	**Change Description:**
02/13/2023	
Revised Date:	**Change Description:**
02/13/2023	• Change verbiage from "Practitioner" to "Qualified Proceduralist" • Updated to process to support NYS required practice by law. • Added Section 2, B. Added section I, 7 & 8. • Clarified language of ADM – Authorized Decision Maker. • Added informed consent discussion requirement. • Clarified witness requirement • Added reference to Non-ACGME and ACGME resident or fellow completing consent per policy R-02 and C-12. • Added section to clarify proceduralist performing procedure being different than qualifies provider performing the informed consent • Made language consistent with invasive, diagnostic, therapeutic or surgical procedure throughout policy. • Added section II, B a-c. • Appendix # - added consent exception for Homeless youth per public health law amendment.

Quick Find Index

Applies to:

Any licensed individual that is qualified to perform the procedure for which informed consent is being obtained for invasive & non-invasive procedures. This individual is referred to in this policy as "Qualified Proceduralist". (Refer to Appendix 1 for a list of procedures.)

Policy:

This policy applies to informed consent and refusal of health care by adults, minors and patients with developmental disabilities and, if applicable, their authorized decision makers (ADM). For health care decisions at the end of life, refer to this policy as well as Clinical Policy CM E-17, End of life, Including DNR and MOLST, for further details specific to life-sustaining treatment.

I. Elements of Informed Consent:

A. Discussion Required

Any adult with capacity to make health care decisions may consent to or refuse health care. Informed consent is fundamentally a process and conversation; it is not a form. The purposes of informed consent are to promote self-determination, respect patients' wishes, and encourage informed, rational decision making. Informed consent is a process that includes providing information in terms a lay person can understand and obtaining consent or refusal.

Patients or authorized decision makers who have challenges in participating in the informed consent process, (e.g., language barriers, hearing, or visual impairment) will be accommodated to ensure full participation in the process.

If the patient lacks decision-making capacity and has appointed a health care agent, the attending physician, nurse practitioner or physician assistant are to obtain consent from the authorized health care agent. If a patient lacks decision-making capacity and there is no health care agent, the Family Health Care Decisions Act (FHCDA) allows an authorized surrogate decision maker, to be selected. Both health care agents under the Public Health Law Article 29-C (Health Care Agents and Proxies) and authorized surrogates under the Public Health Law Article 29-CC (Family Health Care Decisions Act) are considered "Authorized Decision Makers" and are referred to in this policy as ADMs. In general, ADMs have the authority to make any and all health care decisions on the adult patient's behalf that the patient could make if she/he had capacity.

In order to ensure the patient's or ADM's understanding and ability to reason about pertinent information and reach an informed decision, the process of informed consent involves an informed consent discussion. In the informed consent discussion, a practitioner with the necessary training and experience provides the patient or ADM with relevant information about the patient's medical condition and a description of the proposed treatment or procedure and whether anesthesia or sedation is to be used.

Elements to be discussed with the adult patient or the patient's ADM include, but are not limited to:

1. **Indications for the proposed treatment or intervention;**
2. **Reasonably anticipated benefits;**
3. **Reasonably anticipated material risks[1] and burdens, including the likelihood of each;**
4. **Reasonable alternatives and their respective associated material risks and benefits, including the option of no treatment and the consequences of refusing the care proposed;**
5. **Identification of which Qualified Proceduralist will perform the procedure. For surgeries, disclosure as to whether residents or other qualified non-physicians are anticipated to perform important tasks related to the surgery, including, but not limited to, opening and closing, dissecting, removing and transplanting tissue, administering anesthesia, implanting devices and placing invasive lines. If so, they will only be assigned such tasks that are within their respective scope of practice, privileges, and competency level, and they will be appropriately supervised.**
6. **The informed consent discussion requires that patients/ADMs be given the opportunity to ask and receive answers to any questions they may have. Once the discussion has been completed the qualified proceduralist must sign the informed consent form.**
7. **The informed consent discussion requires that the qualified proceduralist explains expected difficulties, recovery time, pain management, and restrictions that may occur after the treatment or procedure in the hospital and post-discharge.**
8. **The informed consent process provides the patient/ADM the full opportunity to repeat back what will be done in the treatment/procedure, why it will be done, and the risks of the procedure.**

B. Witness Requirement

Each consent form must be signed by a witness who observes the patient or ADM sign the consent form or confirm that the patient or authorized decision maker has signed the consent form. A witness may be a member of the house staff, another physician, a medical student, a nurse, an adult family member, friend, or other hospital staff, but may not be the Qualified Proceduralist obtaining the consent.

[1] **Material Risks could include risks with a high degree of likelihood but a low degree of severity, as well as those with a very low degree of likelihood but high degree of severity. It is within the professional judgment of the qualified proceduralist responsible for securing informed consent/refusal, based on available clinical evidence, to ensure that the appropriate information is made available to the patient or authorized decision maker.**

C. Documentation

Documentation of informed consent or refusal on a consent form shall only occur following the informed consent discussion and a decision by the patient or ADM. Any questions regarding the process for consent to or refusal of treatment should be directed to the Administrative Supervisor. The informed consent form shall be included in the medical record. In extenuating circumstances when the original is unavailable, a copy and/or a facsimile is acceptable, to ensure timely patient care.

D. Deletion

In the event a patient or ADM wishes to delete any part of a consent form for any reason, the language in question should be crossed out, initialed, and dated by the patient or ADM, the witness, and the qualified proceduralist. The qualified proceduralist responsible to ensure that informed consent has been obtained must review the deletions made on the form by the patient or ADM and determine whether, in light of the deletions made to the consent form, complete informed consent has been obtained and whether the proposed procedure, treatment or test should still proceed.

II. Written Consent Forms:

Written informed consent should be obtained for any non-emergent invasive, diagnostic, therapeutic or surgical procedure which involves invasion or disruption of the integrity of a body cavity. The following is a list of circumstances in which written informed consent must be obtained. If there is a question as to whether or not a written consent form is necessary, written consent should be obtained.

A. Consent Upon Admission to Upstate University Hospital

The General Consent for Diagnostic and Medical Treatment and Financial Agreement is required for all inpatients and Emergency Department patients upon each admission to University Hospital, and for all outpatients upon initiation of treatment and yearly thereafter. The purpose of this form is to obtain consent from the patient or the patient's ADM for routine procedures and/or medical treatments that do not require written informed consent on a separate consent form.

If the adult patient has capacity to make health care decisions but is unable to sign due to illness or disability, the reason should be noted and the patient's verbal consent documented.

If the patient refuses to sign, registration staff shall note this refusal on the form.

If the adult patient has been determined to lacks capacity to make health care decisions, registration staff should obtain the signature of an ADM.

If no ADM is available to sign upon admission, registration staff should attempt to contact an ADM. If no ADM can be identified or reached after reasonable efforts, registration staff will notify the Social Work Department.

B. Consent for Invasive, Diagnostic, Therapeutic or Surgical Procedures

In all cases where written informed consent is required, regardless of the method of obtaining consent, a completed informed consent form shall be included in the medical

record, except in emergency circumstances as defined in Section 5 below, if there is no time to complete a written consent form.

For the purposes of consent, a "qualified proceduralist" is a licensed provider ~~recognized~~ credentialed by the hospital to perform the procedure designated on the consent form, and is capable of performing that procedure independently. He or she may delegate the responsibility for the informed consent form completion to another physician, nurse practitioner, or physician assistant. For any case being performed "qualified proceduralist" must complete the informed consent. Non-ACGME fellow physicians may be considered to be the "qualified proceduralist" for procedures performed in an operating room, interventional suite, or endoscopy suite if the procedure is outside the purpose of the fellowship and they otherwise have hospital privileges to perform the designated procedure. ACGME resident or fellow physicians, physician assistants, and nurse practitioners may be considered "qualified proceduralists" for bedside procedures for which they have been deemed competent to perform through residency or other privileging process per Institutional Policy R-02 and C-12.

In the case that a proceduralists performing the procedure is different from the qualified provider performing the informed consent process:

1. **the qualified provider obtaining informed consent shall sign, date, and time the consent form on the line designated "Person Explaining Procedure"**
2. **the proceduralist performing the procedure shall confirm with the patient or healthcare proxy that informed consent has been obtained**
3. **the proceduralist performing the procedure shall sign, date and time the consent form on the line designated "Proceduralist Verification for invasive or operative procedures"**

Surgery, treatments, procedures, or tests which involve invasion or disruption of the integrity of a body cavity, or which involve a significant degree of risk (other than those listed as exceptions in Appendix 1 of this policy, which require a specific consent) require written documentation of informed consent on a completed and signed consent form for that surgery, treatment or test.

Unless a unique consent form for the procedure or treatment exists, the Consent for Diagnostic, Therapeutic, Invasive or Surgical Procedures shall be used. A listing of all consent forms may be found at Policy Manager - MCN Healthcare.

The qualified proceduralist obtaining the informed consent or refusal shall document in the medical record the essential elements of the informed consent discussion and whether the patient or ADM has consented or refused. Once informed consent has been obtained, the qualified proceduralist must sign in the designated area on the informed consent form. After the qualified proceduralist has signed the designated area, a physician, nurse practitioner, or physician assistant complete the remainder of the form excluding the Proceduralist Final Attestation. Upon informed consent form completion, the form must be placed in the medical record. The consent form must be completed and the name of the procedure stated first in medical terminology consistent with the scheduling of the

procedure and then in laymen's term that are understandable to the patient. No acronyms or abbreviations (side spelled out as "left", "right" or "bilateral").

B. Consent for Anesthesia/Sedation
For procedures involving the use of anesthesia or sedation, an informed consent discussion must occur between the patient and the anesthesiologist prescribing the sedation; the elements of this discussion must be documented in the medical record. The anesthesiologist may delegate this responsibility to a resident anesthesiologist or certified registered nurse anesthetist, as long as the anesthesiologist ensures that the designated individual has sufficient knowledge and experience to secure informed consent or refusal for the anesthesia. See Patient Anesthesia Care Consent.

C. Consent to Transfuse
For preoperative patients scheduled for elective surgery who have a type and screen or type and cross-match ordered the Consent to Transfuse form should be completed, in addition to the Consent for Diagnostic, Therapeutic, Invasive or Surgical Procedures form.

D. For the following procedures, refer to the specific policies referenced:
- **Transfusions/Administration of Blood Products (See Clinical Manual, CM B-07, Blood and Blood Product Administration)**
- **Discharge AMA (See Administrative Manual, Policy D-16, Discharges From Upstate University Hospital)**
- **Consent for Autopsy (See Administrative Manual, Policy A-11, Autopsy/Post-Mortem Examination Authorization Policy)**
- **Sterilization (See Administrative Manual, Policy S-08, Sterilization Procedure for Medicaid and Medicaid-Eligible Patients [Male or Female] Hysterectomies Covered by Medicaid Program)**
- **HIV-Related Testing (See Administrative Manual, Policy H-03, HIV-Related Testing and Mandatory Reporting for Inpatients and Outpatients)**
- **Apheresis (See Apheresis Manual, Policy APH C-18, Apheresis Service Informed Consent)**
- **Chemotherapy (See Clinical Manual, Policy CM C-17, Chemotherapy/Biotherapy Prescribing and Administration)**

III. Verbal or Telephone Consent
Written consent should be obtained whenever possible for situations as described in Section 2 above. However, if written consent cannot be obtained, consent may be obtained by verbal (i.e., oral) or telephone consent. Although verbal consent is allowed (except in the case of autopsies within 48 hours of death - see Policy A-11, Autopsy/Post-Mortem Examination Authorization Policy), such consent may be difficult to verify. Therefore, written consent should be obtained whenever possible. A registered nurse or practitioner (other than the practitioner obtaining the consent) must witness the patient or ADM communicate verbal consent and document this on the consent form.

IV. Consent by Interpreter or Written Translation

When the patient or ADM is non-English speaking, consent forms are to be obtained in accordance with Policy I-07, Interpreter Services for Patients with Limited English Proficiency (LEP), Deaf/Hard of Hearing or Speech Impairments.

V. Emergency Treatment

An emergency means that, in the qualified proceduralist's judgment, the person is in IMMEDIATE need of medical attention and any delay to secure consent would significantly increase the risk of harm to the person's life or health. Health care may be rendered to persons of any age without the consent of the individual or ADM when, in the qualified proceduralist judgment, an emergency exists. Documentation of providing emergency treatment without consent shall be entered in the medical record.

If the treatment provided would have required the completion of a unique consent form, the attending physician shall document on the consent form that an emergency exists, a brief description of the emergency, and that the necessary treatment is being provided without consent.

VI. Duration of a Consent Form

A. Written consents are valid for 90 days unless:

1. **There has been a significant change in any of the facts on which the consent was based (e.g., a change in the material risks, benefits, and alternatives, goals for treatment, the patient's condition changes in an unanticipated manner, a different procedure is to be performed);**
2. **The consent relates to sterilization; or**
3. **The consent relates to a pre-planned series of treatments or procedures, as discussed below.**

B. Consent to Serial Procedures

When a patient is to undergo a pre-planned series of treatments or procedures other than transfusion of blood and/or blood-related products, consent for the entire series may be obtained before the series is initiated unless any of the following apply, in which case, a new consent must be obtained with respect to the treatments or procedures remaining in the series:

1. **There is a change in any of the facts on which the consent was based (e.g., the patient's condition changes in an unanticipated manner, the treatment plan is changed); or**
2. **There is an interval of more than 90 days between the obtaining of the consent and the initiation of the series, or between consecutive treatments or procedures in the series; or**
3. **The series continues for more than six months.**
   a. **The consent form shall indicate the approximate schedule and number of treatments or procedures to be included in the series.**

C. Questions

The Administrative Supervisor or Administrator on Call, available through the Upstate University Hospital Operator, should be contacted for any questions related to consents.

VII. Who May Consent

A. Adult patients, 18 years of age or older, who possess the capacity to make health care decisions may consent to their own medical care.

B. Minors in certain circumstances and ADMs on their behalf (see Appendix 3).

C. For adults who lack capacity to make health care decisions due to developmental disability, (see Appendix 2).

D. For adult patients who lack capacity to make health care decisions for reasons <u>other than</u> developmental disability, the process is outlined below.[2]

The hospital shall make reasonable efforts to ascertain, to the extent reasonably possible, the patient's wishes and preferences about his/her medical care, and whether the patient has committed them to writing. These findings shall be recorded in the patient's medical record.

If the patient has not already made a decision about proposed health care treatment, consent or refusal may be provided by any of the following in order of descending priority who are available, willing and competent to act. However, such person may designate any other person on the list to be surrogate, provided no one in the class higher in priority than the person designated objects.

1. **A Court through an existing court order;**
2. **Health Care Agent appointed pursuant to a Health Care Proxy;**
3. **Guardian authorized to make medical decisions;**
4. **Spouse (if not legally separated from the patient) or Domestic Partner[3];**
5. **Adult son or daughter (18 years of age or older);**
6. **Parent;**
7. **Adult sibling (18 years of age or older); or**
8. **Close friend or relative with knowledge of the patient's views.**

VIII. Evaluation of Patient's Decision-Making Capacity

A. Requirements:

All adult patients are presumed to have decision-making capacity unless deemed otherwise by court order/legal guardianship.

It is the responsibility of the attending physician, nurse practitioner or physician assistant to determine whether the patient possesses the requisite abilities to make his or her own

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[2] **FHCDA governs decision making for adult patients who lack capacity for reasons other than developmental disability and who have not appointed a health care agent.**

[3] **A domestic partner means that the person with respect to the patient is an adult who is neither a blood relative (of a degree which would preclude marriage) nor adopted child and:**
(i) is formally in a domestic partner or similar relationship with the patient according to federal or applicable state laws or
(ii) is registered in a domestic partner registry maintained by an employer of either person or any governmental entity; or
(iii) either the person or the patient is formally recognized as a beneficiary or covered person under the other person's employment benefits or health insurance; or
(iv) either the person or the patient is dependent or mutually interdependent on the other person for support, as evidenced by the totality of the circumstances indicating a mutual intent to be domestic partners including but not limited to common ownership or joint leasing of real or personal property; common house-holding, shared income or expenses, children in common, signs of intent to marry or become domestic partners and length of relationship.

medical treatment decisions. In order to render informed consent to or informed refusal of treatment, the patient must be able to understand, appreciate, and reason about the nature of his or her medical condition; the indications, risks, benefits, and alternatives to the proposed treatment and reasonable alternatives, including the option of no treatment; and to reach an informed decision.

The attending physician, nurse practitioner or physician assistant must make the determination that a patient lacks capacity with a reasonable degree of medical certainty. Such determination shall be made and recorded in the medical record and shall contain the opinion of the attending physician, nurse practitioner or physician assistant regarding the nature of the patient's incapacity, as well as its extent and probable duration.

B. Patient with Mental Illness:
For a determination of capacity of a patient with a mental illness, in addition to the attending physician, nurse practitioner or physician assistant making the determination, unless the attending physician is a qualified psychiatrist, a concurring determination must be made by a qualified psychiatrist.

C. Patient with Developmental Disability
For determination of capacity of a patient to make health care decisions with a developmental disability, see Appendix 2.

D. Decisions to Withdraw or Withhold Life Sustaining Treatment:

1. By Health Care Agent
A consultation with another physician, nurse practitioner or physician assistant to confirm the capacity determination is required before a health care agent may make a decision concerning the withdrawal or withholding of life sustaining treatment-and shall include an assessment of the nature and extent of the patient's incapacity and the likelihood that the patient will regain decision-making capacity, and shall be included in the patient's medical record.

2. By Surrogate Decision Maker
See Policy CM E-17 End of Life, Including DNR and MOLST.

E. Concurring Determination Disagrees:
If an attending physician, nurse practitioner, or physician assistant has determined that the patient lacks decision-making capacity and a concurring determination disagrees, the matter shall be referred to the Ethics Consultation Service and then to the Ethics Review Team[4] if it cannot otherwise be resolved.

IX. Informing the Patient and ADM of a Determination of Lack of Capacity

Notice of a determination that an ADM will make health care decisions because the patient has been determined to lack decision-making capacity shall be given promptly:

A. to the patient, where there is any indication of the patient's ability to comprehend the information;

B. to the ADM;

[4] **See Policy E-18, *Ethics Review Teams*.**

C. if the ADM is a surrogate under the FHCDA and surrogates in a higher order of priority are not reasonably available to serve, to at least one person in the highest-ranking order on the surrogate list; and

D. if the patient was transferred from a mental hygiene facility, to the facility director.

X. Right of Patient to Object to a Determination of Lack of Capacity

A patient who has been determined to lack decision-making capacity may object to (1) the determination of incapacity; (2) an individual designated by the hospital as the surrogate decision maker; or (3) a health care decision by the ADM. The patient's objection shall prevail absent a court order.[5]

XI. Decision-Making Standard of ADM

Court-appointed guardians must make decisions as legally outlined in the law that empowers them to act. Questions regarding the standard applicable to a court-appointed guardian should be directed to Hospital Administration.

Health Care Agents and Surrogate Decision Makers under the FHCDA must make decisions in accordance with the patient's wishes (if known), considering the patient's prior statements, beliefs, and values. If the patient's wishes are not known and cannot be reasonably ascertained, decisions should be made based on the patient's best interest.[6] Best interest of the patient is generally determined by considering the dignity and uniqueness of every person; the possibility and extent of preserving life; preserving, improving, or restoring the patient's health and function; and relieving the patient's suffering.

XII. Decision-Making for Patient Without an Identified ADM

If, despite reasonable efforts, no individual who may consent has been identified, consent may be obtained as follows:

A. For routine medical treatment[7]: The attending physician, nurse practitioner or physician assistant may decide about routine medical treatment. Consultation with the Ethics Consultation Service is available.

B. For major medical treatment[8]: The attending physician, nurse practitioner or physician assistant shall make a recommendation regarding the patient's major medical treatment,

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[5] See Public Health Law Section 2994-c(6) and 2983(5).

[6] With respect to Health Care Agents only, they are permitted to make decisions about administration of artificial nutrition and hydration if the patient's wishes are known.

[7] Routine medical treatment means any service or procedure to diagnose or treat a patient's physical or mental condition, which includes the administration of medication, the extraction of bodily fluids for analysis, or dental care performed with local anesthetic, for which health care providers ordinarily do not seek additional specific consent from the patient or authorized decision maker. It shall not include provision of treatment such as ventilator support or a nasogastric tube, but shall include such treatment when provided as part of post-operative care or in response to an acute illness and recovery is reasonably expected within one month or less.

[8] Major medical treatment means any treatment, service or procedure to diagnose or treat an individual's physical or mental condition: (i) where general anesthetic is used; or (ii) which involves any significant risk; or (iii) which involves any significant invasion of bodily integrity requiring an incision, producing substantial pain, discomfort, debilitation or having a significant recovery period; or (iv) which involves the use of physical restraints except in an emergency; or (v) which involves the use of psychoactive medications, except when provided as part of post-operative care or in response to an acute illness and treatment is reasonably expected to be administered over a period of forty-eight hours or less, or when provided

in consultation with the hospital staff directly responsible for the patient's care, and at least one other physician (who may be a resident), nurse practitioner or physician assistant, who independently concur that the recommendation is appropriate. In addition, the attending physician, nurse practitioner, or physician assistant must consult the Ethics Consultation Service if the attending physician, nurse practitioner or physician assistant decides to forgo major medical treatment.

C. For withholding or withdrawing life-sustaining treatment: See Policy CM E-17, End of Life, Including DNR and MOLST and Policy E-18, Ethics Review Teams.

D. Decisions to Elect Hospice Care[9]: For a hospice-eligible adult patient, the attending physician, nurse practitioner or physician assistant is authorized to make decisions regarding hospice care in consultation with staff directly responsible for the patient's care and execute appropriate documents. One other physician, nurse practitioner or physician assistant must independently concur with the recommendation and the Ethics Review Team must review and approve the decision.

Corresponding Procedure:

None

Staff Education/Related Resources:

End of life, Including DNR and MOLST, CM E-17
Blood and Blood Product Administration, CM B-07
Discharges From Upstate University Hospital, D-16
Autopsy/Post-Mortem Examination Authorization Policy, A-11
Sterilization Procedure for Medicaid and Medicaid-Eligible Patients [Male or Female] Hysterectomies Covered by Medicaid Program, S-08
HIV-Related Testing and Mandatory Reporting for Inpatients and Outpatients, H-03
Apheresis Service Informed Consent, APH C-18
Chemotherapy/Biotherapy Prescribing and Administration, CM C-17
Interpreter Services for Patients with Limited English Proficiency (LEP), Deaf/Hard of Hearing or Speech Impairments, I-07
Ethics Review Teams, E-18
Resident Supervision Policy, R-02
Residents/Fellow Procedure Credentialing; ACGME Accredited Programs C-12

Form Name(s) and Number(s) (other than identified herein):

General Consent for Diagnostic and Medical Treatment and Financial Agreement, F41676
Patient Anesthesia Care Consent, F83649
Consent for Diagnostic, Therapeutic, Invasive Procedure or Surgery, F40580

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in an emergency.

[9] See Public Health Law Section 2994-g. All recommendations and decisions must be in accordance with clinical and decision-making standards that would apply to a surrogate decision under the FHCDA.

Originating Department: **Social Work**
Contributing Department(s): **Risk Management, Office of General Counsel, Ethics Committee, Health Information Management, Patient Access Services**

Evidence-Based References/Regulations:

National Integrated Accreditation for Healthcare Organizations (NIAHO®): Accreditation Requirements, Interpretive Guidelines and Surveyor Guidance Revision 20-1 (2020, September 21).

In DNV GL - Healthcare NIAHO Accreditation Requirements, Interpretive Guidelines and Surveyor Guidance. http://www.upstate.edu/ihospital/intra/pdf/interpetiveguidelines18_2.pdf

Family Health Care Decisions Act, Public Health Law Article 29-CC

Health Care Agents and Proxies, Public Health Law Article 29-C

Surrogate's Court Procedure Act, Article 17-a

OPWDD - Care and Treatment, 14 NYCRR 633.10

Informed Consent, NY Public Health Law Section 2442

Enabling Certain Persons to Consent for Certain Medical, Dental, Health and Hospital Services, NY Public Health Law Section 2504

APPENDIX 1: List of Procedures Requiring Specific Consent

A signed Consent for Diagnostic, Therapeutic, Invasive or Surgical Procedures (Form 40580) is NOT required for the following example procedures, as they are covered under the General Consent for Diagnostic and Medical Treatment and Financial Agreement (Form 41676), signed at the time of admission. However, when appropriate, the practitioner must explain to the patient and/or ADM the benefits and risks and the reasons for doing the procedure prior to initiating the procedure and should document this discussion in the patient's chart. Regardless of whether written informed consent is required, patients, retain the right to refuse diagnostic and medical treatment.

The below list should not be interpreted as complete and any questions regarding consent should be referred to Risk Management, the Administrative Supervisor or the Administrator on call.

1. **Arterial Lines**
2. **Blood drawing, arterial blood gases**
3. **Bronchoscopy and suctioning in patients who are intubated or who have a tracheostomy**
4. **Closed reduction of minor fractures and dislocations – not requiring the use of anesthesia or sedative**
5. **Foley Catheter insertion into bladder**
6. **Guidewire line changes for the replacement of the same tube (i.e., CVPs/Peg Tubes/Suprapubic tubes)**
7. **Indirect laryngoscopy and fiberoptic examination**
8. **Nasal Packing/cauterization**
9. **Nasogastric, Nasojejunal or Oral gastric tube placement and or lavage**
10. **Oral and intra-vascular contrast (Note: DOH requires a Time Out with intra-vascular contrast)**
11. **Pelvic Examination and pap smears**
12. **Peripheral IVs, Venipuncture to obtain blood for diagnostic testing**
13. **Rectal Tube insertion**
14. **Routine laceration closures**
15. **I & D or simple needle aspiration/punctures of superficial abscesses/boils or other suspicious skin lesions (note: fine needle aspirations)**
16. **Subungual hematoma release**
17. **Transvaginal or trans-rectal ultrasound**
18. **Wound Care: debridement, splinting, and reopening of surgical incision/wounds**
19. **Simple foreign body removals not in OR, abdominal wounds NOT requiring wound extension or additional skin incision; extensive exploration and/or debridement; vascular compromise or surgical closure**
20. **Anoscopy**
21. **Peritoneal and Hemodialysis for established dialysis patients with access**

The Consent for Diagnostic, Therapeutic, Invasive or Surgical Procedures (Form 40580) is required for the following procedures:

1. **Angiography**
2. **Biopsy with more than minimal risk**
3. **Bronchoscopy in non-intubated patients**

4. **Invasive Cardiac Testing including:**
   a. **Transesophageal Echocardiogram**
   b. **Cardiac Catheterization**
5. **Therapeutic Phlebotomy**
6. **EPS Studies**
7. **Laryngoscopy**
8. **Pheresis**
9. **Insertion of access devices**
10. **Termination of Pregnancy**
11. **Chest Tube Insertion**
12. ~~**Chest Tube Insertion**~~
13. **Lumbar Puncture**
14. **Aspiration of a joint**
15. **PICC Line Insertion**
16. **Cystoscopy**

Each of the following procedures requires the specific consent form identified:

1. **Anesthesia & or sedation - Patient Anesthesia Care Consent, Form F83649**
2. **Amniocentesis - Regional Perinatal Center Informed Consent and Release for diagnosis by Amniocentesis, Form F85238**
3. **Blood Transfusion - Consent to Transfuse, Form 41485**
4. **Sterilization Procedures - Consent for Sterilization, Form F82634**
5. **ECT – Electro-Convulsive Therapy (Refer to Policy and procedure for Downtown & Community Campuses - Electroconvulsive Therapy (ECT) Consent Form Acute Phase, Form F86476**

If additional written consent is required, this then triggers Administrative Manual Policy S-19, Procedure Verification for Surgical and Invasive Procedures, and requires a Time Out.

APPENDIX 2: Capacity Determinations and Health Care Decisions for Patients with Developmental Disabilities

Patients with developmental disabilities or who are under the auspices of the Office for People with Developmental Disabilities (OPWDD):

A. Capacity Determinations: Adult patients with developmental disabilities are presumed to have capacity. When a physician, nurse practitioner or physician assistant determines, to a reasonable degree of medical certainty, that an adult patient with a developmental disability lacks decisional capacity, the determination must be documented in the medical record, including the opinions regarding the cause and nature of incapacity and the extent of probable duration. Also, if the attending physician does not have the following qualifications, another physician with the following qualifications must independently determine whether the patient lacks decision-making capacity: a physician or clinical psychologist who either is employed by a developmental disabilities services office, or who has been employed for a minimum of two years to render care and service in a facility operated or licensed by OPWDD, or has been approved by the Commissioner of Developmental Disabilities in accordance with regulations promulgated by such Commissioner and such regulations shall require that a physician or clinical psychologist possess specialized training or three years' experience in treating developmental disabilities. A record of such consultation shall be included in the patient's medical record.

B. If the patient came from an OPWDD-regulated facility and is deemed to lack decisional capacity to consent to or refuse medical treatment, for treatment which does not require informed consent, the Director of the Facility or other representative speaking on behalf of the patient may authorize routine medical treatment.

C. If a resident of an OPWDD facility, such as a Developmental Center or Group Home, is deemed to lack decisional capacity to consent to or refuse medical treatment, for all decisions other than an order not to resuscitate, consent for treatment must be obtained from a legally authorized decision maker.

The following parties, in order of priority, are legally authorized to provide informed consent in such cases:

1. **Guardian lawfully empowered to give such consent or Health Care Agent appointment pursuant to a Health Care proxy;**
2. **Actively involved spouse**
3. **Actively involved parent**
4. **Actively involved adult child**
5. **Actively involved adult sibling**
6. **Actively involved adult family member (related by blood, marriage, or legal adoption)**
7. **Consumer Advisory Board for Willowbrook Class**
8. **Surrogate Decision-Making Committee or Court Order**

D. When a legally authorized decision maker makes health care decisions, the decision maker must base all health care decisions solely and exclusively on the best interests of the patient, or if the patient has ever had the capacity to form wishes regarding medical treatment, when reasonably known or ascertainable with reasonable diligence, on the patient's wishes, including moral and religious beliefs.

E. Guardians and qualified family members of patients with developmental disabilities may be given the authority to make decisions to forego or withdraw life-sustaining treatment. With respect to decisions near the end of life, an assessment of the patient's best interests shall include the dignity and uniqueness of every person; the preservation, improvement, or restoration of the patient's health; the relief of suffering by palliative care or pain management; the unique nature of artificially provided nutrition or hydration and the effect it may have on the patient and the entire medical condition of the patient (see Clinical Manual, Policy CM E-17, End of Life, including DNR and MOLST).

Questions regarding patients with developmental disabilities should be referred to Hospital Administration.

APPENDIX 3 – Informed Consent for Minors

(For decisions regarding life sustaining treatment and end of life, see Clinical Manual Policy CM E-17, End of Life, including DNR and MOLST)

I. Who may consent on behalf of a minor

A. Consent generally to treat a minor must be given by a parent, legal guardian, or other individual who is legally designated in writing to be in a "parental relationship" with the minor if the person in a parental relation is authorized to consent to the proposed treatment (see subdivision b below). There are circumstances, however, where the minor patient is authorized to consent on his/her own behalf (see subdivisions c and d below). It is also important to note that a minor parent may consent for medical, dental, health and hospital services for his/her child.

B. Designation of a Parental Relation[10]:

An adult who is not the parent or guardian of a minor may be legally designated by the parent(s) to be in a "parental relation" with the minor for a period of time not to exceed twelve months, for purposes of consenting to certain medical, dental, health and hospital services, including HIV-related testing, EXCEPT:

1. **Major medical treatment which is defined as: medical, surgical, or diagnostic intervention or procedures involving a general anesthetic or significant risk or significant invasion of bodily integrity requiring an incision or producing substantial pain or discomfort, debilitation or having a significant recovery period; or**
2. **Electroconvulsive therapy; or**
3. **Withdrawal or discontinuance of medical treatment which is sustaining life functions (including an order not to resuscitate); or**
4. **Any other treatment that has specifically been limited or restricted by the parent in the designation document.**

If a person has been designated to be in a parental relation with a minor, a copy of the designation document shall be placed in the medical record. To be valid for up to thirty days, the designation must be in writing and contain the following information:

a. name of the designating parent(s);
b. name of the designee;
c. name of each minor; and
d. signed and dated by the designating parent.

To be valid for up to twelve months, in addition to the above requirements, the designation must also contain the following information:

a. address and telephone number where the designating parent can be reached;
b. address and telephone number where the designee can be reached; and
c. date of birth of each minor;
d. date or contingent event on which the designation commences;

[10] The parent is authorized to designate another person in "parental relation" provided there is no prior court order in effect that would prohibit the parent from exercising the same authority or requiring the parent consult with another to make health care decisions for the minor.

e. **the written consent of the designee;**
f. **a statement that there is no prior court order prohibiting the parent(s) from making the designation; and**
g. **must be notarized.**

The authority given to the designee may be restricted or limited by the parent on the form. It is necessary to review the document presented by the designee to establish the scope of the designee's authority to consent to medical treatment to determine whether the treatment being provided or proposed is within the scope of authority of the designee given by the Parent and permissible under the law, or whether parental or guardian consent would be required.

Questions regarding these issues should be directed to Hospital Administration.

C. Parental or guardian consent is not required, and the minor may consent for his/her own care, if the minor meets one of the following criteria:

1. **The patient is a parent; or**
2. **The patient is married; or**
3. **The patient is pregnant and consenting for prenatal/maternal care; or**
4. **The patient is emancipated, meaning he or she is at least 16 years of age and living independently from his or her parents or guardian; or**
5. **The patient is active in the military.**

D. Exceptions

There are certain exceptions or special for specific types of treatment:

1. **Abortion – a minor may consent if she understands the risks, benefits, and alternatives.**
2. **Sexually Transmitted Disease (STDs) – a minor may consent for treatment.**
3. **Family Planning Services – minors may give consent for counseling and prescription services for birth control without the consent or notification of parents or guardians.**
4. **HIV-related Testing – age is not controlling. The test is whether the patient has "capacity to consent", which is defined as: "an individual's ability, determined without regard to the individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment, or procedure, or of a proposed disclosure of confidential HIV-related information, as the case may be, and to make an informed decision concerning the service, treatment, procedure, or disclosure".**
5. **Immunizations:**

   The following individual may consent to immunizations on behalf of a minor;

   a. **A person in a parental relation to a minor;**
   b. **A grandparent who has assumed care of the minor;**
   c. **An adult brother or sister who has assumed care of the minor;**
   d. **An adult aunt or uncle who has assumed care of the minor;**

6. **An adult who has care of the child and has written authorization to consent to immunizations from a person in a parental relation to the minor.**
However, a person other than one in a parental relation to the child as defined in subdivision b above may not give consent if he/she has reason to believe that "a person in parental relation" to the minor objects to the immunization. A "person in parent relation" means a father, mother, by birth of adoption, a legally appointed guardian or a custodian. A "custodian" is a person who has assumed care of the child because the parents or legally appointed guardian have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted the minor or are living outside the state or their whereabouts are unknown, or they have designated a person in parental relation to the child.
7. **Routine outpatient care and treatment for minors in cases where a parent, legal guardian, or person in a parental relation is not available or is not able to be located;**
   a. **When a parent, legal guardian, person in parental relation, or other authorized decision maker has authorized routine care and treatment of the minor patient by signing the University Hospital General Consent for Diagnostic and Medical Treatment and Financial Agreement form (Form 41676), the consenting individual's physical presence with the child at the time of treatment is not required, and a responsible adult may accompany the patient to University Hospital for routine visits or treatment in place of the individual consenting to medical treatment if such individual has made such arrangements and if it is appropriate given the patient's condition and the care and treatment being provided. The parent, legal guardian, person in a parental relation or other authorized decision maker must be contacted by the professional staff as necessary regarding the patient's medical condition or treatment. The accompanying adult may not authorize or consent to any treatment of any nature and the parent, legal guardian, or person in a parental relation, or other authorized decision maker, must be contacted if further consent is necessary.**
   b. **When a parent, legal guardian, person in a parental relation, or other authorized decision maker has not previously signed the University Hospital General Consent for Diagnostic and Medical Treatment and Financial Agreement form (Form 41676) and is unable to be located or contacted by hospital staff after diligent efforts, an adult relative who has assumed care of the minor patient may be permitted by the patient's attending physician to authorize routine care and treatment on behalf of the minor patient, except that a non-parent/non-guardian may not provide consent to any procedure or treatment requiring informed consent as provided for in Section B of this policy.**
      i. **In all cases of a minor patient living with a relative or other adult who has assumed care of the minor but is not legally authorized to consent to medical treatment, where no legally established custody or guardianship is in place, the Social Work staff of University Hospital will be consulted and will provide appropriate referrals to the adult relative for the purpose of encouraging receipt of legal and family services to establish legal custody or legal appointment of guardianship over the minor patient for purposes of securing medical care and treatment.**

ii. **Treatment for abused/neglected children – the local Commissioner of Social Services or local Commissioner of Health may consent for treatment when the child has been placed into either court custody or custody of Social Services. For minors in foster care and/or in the custody of Social Services, consent must be obtained from a parent if they are still legally authorized to consent to health care for the minor or the Commissioner of Social Services from the county of residence.**

When the parent is no longer authorized to consent to health care for the minor, parental assent may be obtained in addition to, but not in lieu of, consent of the Commissioner. Questions regarding children in foster care should be referred to Hospital Administration.

8. **Consent for routine medical, dental, and mental health services and treatment of a minor who has been placed in the custody of the Division For Youth may be given by an authorized agent of the Division For Youth, unless we are advised that the Division is not authorized to provide consent. Questions regarding consent in these situations should be directed to Hospital Administration.**
9. **Consent for minors who present in custody of a correctional or detention facility should be obtained from a parent, unless the parent has authorized the custodial agency with the power to consent to medical treatment on behalf of the minor at the dispositional hearing. Parental consent should be obtained on behalf of minors who are under arrest and in the custody of the Police. If a parent is not able to be located, and an emergency situation does not exist, consent may be obtained in some circumstances from the Commissioner of the Department of Social Services. Questions regarding consent in these situations should be directed to Hospital Administration.**
10. **Homeless youth and youth who receive services from approved runaway and homeless youth programs and do not have a parent or guardian available to provide effective consent may consent to certain medical, dental, health, and hospital services.**
11. **Mature Minors**
    There are cases where a court will allow a "mature minor" to make medical decisions despite the wishes of the parents. This can only be done through court intervention. Contact the Office of General Counsel if assisted is needed.

II. **Refusal of treatment on behalf of a minor patient that poses a detriment to the patient's health or safety shall be managed on an individual case basis by the attending physician with the assistance of Hospital Administration and other departments as necessary.**

III. **Substance Abuse Treatment**

A. **If the physician's judgment is that parental or guardian involvement would have a detrimental effect, or if the parent or guardian refuses to consent and the physician believes that the refusal to consent is not in the best interest of the minor, then treatment may be given without the consent or involvement of the parent, guardian, or other person in a parental relation. The physician is required to fully document the reasons for treatment without consent of parent, guardian, or legally authorized caregiver.**

B. If the provider cannot locate a parent or guardian of a minor seeking treatment for chemical dependence, the program director may authorize that the minor be treated on an inpatient/residential/outpatient basis by the provider without consent or involvement of the parents or guardian. The program director must fully document the reasons for providing treatment without consent of a parent, guardian, or other person in a parental relation.

IV. Voluntary Psychiatric Inpatient Treatment
For voluntary admissions of minors ages 16 and 17, the Chief Executive Officer or Hospital Administrator on call has discretion to permit the minor to consent on his/her own.

V. Voluntary Psychiatric Outpatient Services
No parental/guardian consent is needed if:

A. The minor is knowingly and voluntarily seeking services; AND

B. Services are clinically indicated and necessary; AND

C. A parent/guardian/caregiver is not reasonably available; OR

D. Obtaining parental/guardian/caregiver consent would have a detrimental effect; OR

E. A parent/guardian/caregiver has refused consent, and the physician determines that treatment is in the best interest of the minor. The Physician must fully document reasons for his/her determination, and a statement by the minor must be in the record that he/she is voluntarily seeking services. (There can be an initial interview with the minor without consent of parent/guardian for the practitioner to make these determinations)

VI. Use of Psychotropic Drugs for a Minor in a Hospital
Non-emergency administration requires parental/guardian/caregiver consent, except in the following circumstances:

A. If the minor is 16 or 17 years of age, and a parent, guardian, or legally authorized caregiver is not reasonably available, the minor may consent if:
1. The minor has capacity; AND
2. The physician determines the medication(s) is in the minor's best interest

B. If the minor is 16 or 17 years of age, the minor may consent if the treating physician and a second physician who specializes in psychiatry and is not employed by the hospital both determine that:
1. Requiring parental/guardian/caregiver consent would have a detrimental effect; AND
2. The minor has capacity; AND
3. The medication(s) is in the minor's best interest

C. If the minor is 16 or 17 years of age and the parent/guardian refuses to consent, the minor may consent if the treating physician and second physician specializing in psychiatry and who is not employed by the hospital determine that:
1. The minor has capacity; AND
2. The medication(s) is in the minor's best interest; AND

3. **NOTICE OF DECISION to provide medications over parental objection must be provided to parent/guardian/caregiver.**

D. Full documentation of acting under any of the above exceptions must be made in the chart.