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Owner:	<i>Susan Greenwood: Hendrick Health VP, Chief Nursing Office</i>
Policy Area:	<i>Patient Services</i>
Standards & Regulations:	
References:	

## Informed Consent, 4.7361

### PURPOSE:

Hendrick Medical Center and its affiliates ("Hendrick") recognizes that it is the responsibility of the physician to obtain informed consent of a patient or the person having legal authority to give consent for the patient (surrogate decision-maker) and to document that consent prior to treatment according to policies of Hendrick and the laws of the State of Texas.

### DEFINITIONS:

- A. An "adult" is defined as a person eighteen (18) years of age or older or a person under 18 years of age who has the disabilities of minority removed.
- B. "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits of, harms of, and reasonable alternatives to, a proposed treatment decision.
- C. "Incapacitated" means lacking the ability, based on reasonable medical judgment of the provider, to understand and appreciate the nature and consequences of a treatment decision, including significant benefits and harms of and reasonable alternatives to any proposed treatment decision. If the patient lacks the capacity to make decisions, the provider must document this in the medical record.
- D. "Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.
- E. Elective Treatment/Procedure - The medical/surgical condition and need for the procedure and/or treatment are known and scheduled ahead of time. Cancellation of the procedure will not pose immediate threat to the patient.
- F. Emergency Medical Services - Is defined as services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.
- G. Medical Treatment - Means a health care treatment, service, or procedure designated to maintain or treat a patient's physical or mental condition, as well as preventive care.
- H. Surgical Services - Includes any procedures that is listed as an invasive surgical procedure.
- I. Emergency Surgical Services - If patient is incapacitated or lacks decision-making capacity and a surrogate decision-maker cannot be located; and the likelihood of loss of life/limb.

# POLICY:

## A. Documentation

1. It is the physician's responsibility to:
  - a. determine the need for informed consent;
  - b. determine the decision-making capacity of the patient or appropriate surrogate decision-maker;
    1. If an adult patient in a hospital is comatose, incapacitated or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:
      - i. patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and
      - ii. proposed medical treatment in the patient's medical record.
    2. The attending physician shall make a reasonably diligent effort to contact or cause to be contacted, the persons from the list of individuals, [Refer to B.3.(a)-(h)], eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patients' medical record.
  - c. explain to the patient and to the surrogate decision-maker, if applicable, in simple, non-technical language:
    1. the specific condition to be treated;
    2. the beneficial effects on that condition expected from the medication, therapy, or treatment;
    3. the probable health consequences of not consenting to the medication, therapy, or treatment;
    4. the side effects and risks associated with the medication, therapy, or treatment;
    5. the generally accepted alternatives to the medication, therapy, or treatment, if any, and whether an alternative might be appropriate for the patient; and
    6. the proposed course of the medication, therapy, or treatment.
  - d. obtain a signed disclosure and consent form, evidencing such informed consent, from the patient or surrogate decision-maker, as appropriate.
2. Prior to the performance of the procedure, Hendrick will obtain a signed and dated disclosure consent form that is consistent with the Texas Medical Disclosure Panel that:
  - a. identifies the proposed treatment/procedure;
    1. This form is a legal document. There may be absolutely no abbreviation as to the existing medical condition or impending surgical procedure or diagnostic test.
  - b. names the physician and hospital to whom the patient is giving consent;
  - c. documents the patient's understanding of the disclosed risks and hazards of the treatment/procedure;
  - d. documents the patient's or surrogate decision maker's consent to the treatment/procedure; and,
  - e. documents the patient's or surrogate decision maker's consent or refusal to receive blood or blood products.

- f. Before the patient/Surrogate Decision maker signs, ensure that all blanks are filled in appropriately.
3. If the consent cannot be signed by the patient and the authorized person is not able to personally sign the document then the following exceptions are available:
  - a. **Verbal Consent including telephone and nonverbal consents - When a patient is unable to sign and discussion between a physician and patient has met the prescribed elements of proper informed consent, the signature line of the consent must reflect that the patient is unable to sign but has given oral consent. Such consent must include a witness signature. The reason for the verbal consent must be documented. All telephone consents are considered verbal consents. A patient who cannot talk but who may nod in consent is to be treated as equivalent to a verbal consent.**
  - b. **Telephone Consent - The facility will not rely on telephone consents. However, in emergent situations, telephone consents are to be witnessed by 2 licensed personnel. The exact time and nature of the consent should be noted in the patient's medical record. The Surrogate Decision maker's name and relationship to the patient is to be written on the consent.**
1. **The Texas Medical Disclosure Panel defines treatment/procedures which require full disclosure and consent to specific risks and hazards as "Procedures Requiring Full Disclosure - List A" and treatment/procedures which do not require disclosure and consent are referred to as "Procedures Requiring No Disclosure – List B", which can be found at <https://hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/facilities-regulation/tx-med-disclosure/tmdp-list-a-b-procedures.pdf>**  
**Risks of procedures not included on List "A" or "B" should be fully disclosed by the physician to the patient or surrogate decision-maker and documented in the medical record. The responsible departments will designate in their policies and procedures which special therapeutic or diagnostic procedures should have separate consent forms in keeping with the guidelines established by the Texas Medical Disclosure Panel.**
1. Informed consent may occur in the physician's office between the physician and patient. Hendrick will accept the signed, witnessed, and completed disclosure and consent form from the physician's office, providing the consent form is in keeping with the guidelines established by the Texas Medical Disclosure Panel. There may be no more than thirty (30) days from the date of the consent to the date of the procedure.  
The nurse will verify that the signature on the informed consent form is the patient's signature; obtain acknowledgement from the patient that the physician had obtained his/her informed consent; and, inquire if the patient has any questions or needs further information/explanation, and if so, then have the nurse contact the physician for the physician to have an additional discussion with his/her patient regarding the procedure and the form.
2. **If required, interpretive services will be provided at no cost to the patient to facilitate informed consent.**
3. **Proper informed consent must take place at a time when the patient is not under the influences of narcotic, mood altering substance, debilitating pain, or in such severe distracting emotional or physical distress to the degree that they are unable to understand the content and significance of their consent.**
4. Hendrick nurses may assist the physician by obtaining the signatures on the disclosure and consent form only after the physician has obtained informed consent. The nurse should not assume the physician's

duty of disclosure an obtaining informed consent. If the patient or surrogate decision-maker states there has been no explanation or a lack of sufficient explanation of the treatment/procedure by the physician, the nurse shall not proceed in obtaining signatures. In such event, the nurse must call the physician and explain the patient's or surrogate decision-maker's need for information/explanation.

5. When emergency treatment is performed in the absence of informed consent, the treating physician should document in the chart, after providing treatment, the nature of the emergency, the treatment provided, and the inability to obtain consent before treatment. Consent for emergency care of an individual is not required if:
  - a. the individual is:
    1. unable to communicate because of injury, accident, or illness or is unconscious; and
    2. suffering from what reasonably appears to be a life-threatening injury or illness.
  - b. a court of record orders the treatment of an individual who is in an imminent emergency to prevent the individual's serious bodily injury or loss of life; or
  - c. the individual is a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parents, managing or possessory conservator, or guardian is not present.

#### A. Informed Consent for Adult Patients

1. An individual who is (a) an adult, and (b) possesses decision-making capacity, may give or refuse consent to any procedure.
2. If the patient is a competent adult, only the patient may give informed consent and sign the consent form, when required, for himself/herself.
3. If the physician determines the patient lacks decision-making capacity, or is otherwise mentally or physically incapable of communication, the appropriate surrogate from the following list, in order of priority, with decision-making capacity, is available after reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient, will have authority to consent:
  - a. Court appointed guardian;
  - b. Agent with Durable Power of Attorney for Health Care (A person eighteen (18) years of age or older, or a person under eighteen (18) years of age with the disabilities of minority removed, to whom authority to make health care decisions is delegated by means of a document giving the authority to make health care decisions);
  - c. Patient's spouse (includes common law spouse, i.e., a person who resides with the patient and, who along with the patient, holds himself or herself out to the public as a married couple);
  - d. An adult child of the patient who has the waiver and consent of all the other qualified adult children of the patient to act as the sole decision-maker;
  - e. A majority of the patient's reasonably available adult children;
  - f. The patient's parents or living parent;
  - g. The individual clearly identified to act for the patient by the patient before the patient became incapacitated; or
  - h. The patient's nearest living relative or member of the clergy.
4. If a court has found the patient to be legally incompetent and has appointed a guardian, that guardian will have the authority to consent to the proposed treatment and sign the consent form, when required.

There is no presumption of legal incompetence due to mental retardation. Therefore, in the absence of a court finding of legal incompetence, a physician should seek consent from the patient in these cases.

5. If the patient has executed a durable power of attorney and/or medical power of attorney designating some other person/agent as having the authority to consent to medical care or treatment at such time as the patient is rendered incapable of giving consent **and determined to be incapacitated**, then that person/agent (surrogate decision-maker) may give consent to the proposed care or treatment and sign the consent form, when required.
6. Surrogate consent may not be given in the following situations:
  - a. or voluntary inpatient mental health services;
  - b. electro-convulsive treatment; or
  - c. the appointment of another surrogate decision-maker.
7. If the procedure contemplated involves a termination of pregnancy or a sterilization procedure allowed under hospital policies, the consent of the spouse of the patient is desirable, although not required. If the patient is unmarried and the procedure contemplated involves a termination of pregnancy, the consent of the father of the unborn child is desirable, although not required.

#### A. Informed Consent for Minor Patients

1. An emancipated minor has the same legal capacity to give informed consent as an adult. An emancipated minor is a person under eighteen (18) years of age who:
  - a. has had the disability of minority removed by a court of law; or
    1. a patient claiming to be an emancipated minor by virtue of a court order must provide a copy of the order granting majority.
  - b. is or has been married (including common law marriages).
    1. a person claiming to be an emancipated minor by virtue of a common law marriage must:
      - i. reside (cohabitate) with a person as husband and wife;
      - ii. acknowledge that he/she is married; and
      - iii. hold himself/herself out to the public as being married.
1. Approval should be obtained from The Risk Management Department or the appropriate administrator prior to proceeding with non-emergency treatment with consent from a patient whose claim to emancipation is based upon a common law marriage.
1. Non-emancipated minor under the age of eighteen (18) years old
  - a. A minor may consent to medical, surgical, psychological and/or dental care for himself/herself by a licensed physician or dentist if the minor:
    1. is on active duty with the armed services of the United States of America;
    2. is sixteen (16) years of age or older and resides separate and apart from his/her parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence and is managing his/her own financial affairs, regardless of the source of the income;
    3. consents to the diagnosis and treatment of any infectious, contagious, or communicable disease that is required by law or a rule, to be reported by the licensed physician or dentist to a local

- health officer or the Texas Department of Health, including all sexually transmitted diseases;
4. is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;
  5. consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use; or
  6. is unmarried, is the parent of a child, and has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child.
- b. Hendrick may rely on the written statement of the minor containing the grounds on which the minor has capacity to consent to the minor's medical treatment.
2. A licensed physician, dentist, or psychologist may, with or without the consent of the minor who is a patient giving consent under Rule C.2., advise the parents, managing conservator or guardian of the minor of the treatment given or needed by the minor.
3. Reasonable efforts should be undertaken to contact the parents of a minor, and all such efforts will be documented in the patient's medical record, prior to accepting a consent from any other person. Any of the following persons may consent to medical, dental, psychological, and/or surgical treatment of a minor when the person having the right to consent, as otherwise provided by law, cannot be contacted and actual notice to the contrary has not been given by that person:
- a. a grandparent of the minor;
  - b. an adult brother or sister of the minor;
  - c. an adult aunt or uncle of the minor;
  - d. an educational institution in which the minor is enrolled that has received written authorization to consent from the person having the right to consent, as otherwise provided by the law;
  - e. an adult who has actual care, control, and possession of the minor and has received written authorization to consent from the person having the right to consent, as otherwise provided by the law;
  - f. a court having jurisdiction over a suit affecting the parent-child relationship of which the minor is the subject;
  - g. an adult responsible for the actual care, control and possession of a minor under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or,
  - h. a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.
4. Consent to medical treatment must be in writing, and signed by the person giving consent, and given to the physician, hospital or other medical facility that administers the treatment. Such form must contain:
- a. the name of the minor;
  - b. the name of one or both parents, if known, and the name of any managing conservator or guardian of the minor;
  - c. the name of the person giving consent and his/her relation to the minor;
  - d. a statement of the nature of the medical treatment to be given; and
  - e. the date on which the treatment is to begin.
5. Consent in matters concerning an infant born to an unmarried minor female will be obtained from the

natural mother and, where possible, from her parents. However, in the event of any conflicting consent between the natural mother and her parents, the decision of the natural mother shall prevail.

6. In those cases in which the attending physician deems that a medical treatment (e.g., a blood transfusion) is necessary to save the life of a minor and the parents or guardian refuses consent because of religious or other reasons, Hendrick will facilitate obtaining a court order for temporary custody of the minor for the purpose of providing the treatment. The physician should consult the risk manager or the administrator-on-call for help in this process. Where possible, the physician should consider alternative treatments (e.g., blood derivatives) which are medically acceptable and acceptable to the parents or guardian.
7. A licensed physician, dentist, or psychologist having reasonable grounds to believe that a minor's physical or mental condition has been adversely affected by abuse or neglect may examine the minor without the consent of the minor, the minor's parents, or the person authorized to consent to treatment. The examination may include x-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests. Unless consent is obtained as otherwise allowed by law, a physician, dentist, or psychologist may not examine a minor:
  - a. 16 years of age or older who refuses to consent; or
  - b. for whom consent is prohibited by a court order.
8. Consent to Counseling:
  - a. A minor may consent to counseling for:
    1. suicide prevention;
    2. chemical addiction or dependency; or
    3. sexual, physical, or emotional abuse.
  - b. A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a minor has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may:
    1. counsel the minor without the consent of the minor's parents or, if applicable, managing conservator or guardian;
    2. with or without the consent of the minor who is a client advise the minor's parents or, if applicable, managing conservator or guardian of the treatment given to or needed by the minor; and
    3. rely on the written statement of the minor containing the grounds on which the minor has capacity to consent to the minor's own treatment.
  - c. Unless consent is obtained as otherwise allowed by law, a physician, psychologist, counselor, or social worker may not counsel a minor if consent is prohibited by a court order.
1. Consent to Immunization
  - a. Any of the following persons may consent to the immunization of a minor that is required for admission to a daycare center, an elementary or secondary school, or an institution of higher education under Section 42.043, Human Resources Code, when the person having the power to consent, as otherwise provided by law, has received information on the benefits and adverse effects of the immunizations to be administered and has so indicated in writing on the form or format promulgated by the Texas Department of Health:
    1. guardian of the minor; and

2. a person authorized under the law of another state or a court order to consent for the minor.
- b. If the persons listed above cannot be contacted and the authority to consent is not denied under [C.9.(c)(1)-(3)], consent to the immunization of a minor may be given by:
1. a grandparent of the minor;
  2. an adult brother or sister of the minor;
  3. an adult aunt or uncle of the minor;
  4. a step-parent of the minor;
  5. an education institution in which the minor is enrolled that has received written authorization to consent for the minor from a parent, managing conservator, guardian, or other person who, under the law of another state or a court order, may consent for the minor;
  6. another adult who has actual care, control, and possession of the minor and has written authorization to consent from a parent, managing conservator, guardian, or other person who, under the law of another state or a court order, may consent for the minor;
  7. any court having jurisdiction of a suit affecting the parent-child relationship of which the minor is the subject;
  8. an adult having actual care, control, and possession of the minor under an order of a juvenile court or by a commitment by a juvenile court to the care of an agency of the state or county; or
  9. an adult having actual care, control, and possession of the minor as the minor's primary caregiver, if the adult is granted the right to consent to the minor's immunization by court order, or
  10. the Texas Youth Commission may consent, for a minor committed to it, to the immunization of the minor if each of the following conditions exist:
    - i. a parent, managing conservator, guardian of the minor, or other person who, under the law of another state or a court order, may consent for the minor has been contacted;
    - ii. such person refuses to consent; and
    - iii. such person does not expressly deny to the Texas Youth Commission the authority to consent for the minor.
- c. A person otherwise authorized to consent under [C.9.(a)] may not consent for the minor if the person has actual knowledge that a parent, managing conservator, guardian of the minor, or other person who under the law of another state or a court order may consent for the minor:
1. has expressly refused to give consent to the immunization;
  2. has been told not to consent for the minor; or
  3. has withdrawn a prior written authorization for the person to consent

## Attachments

No Attachments



## Approval Signatures

Approver	Date
Susan Greenwood: VP, Quality	10/21/2020
Brad Thompson: Director, Risk, Compliance, and Patient Experience	10/19/2020

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