

 <p style="text-align: center;"><b>DIVISION OF ADULT INSTITUTIONS</b></p> <p style="text-align: center;"><b>POLICY AND PROCEDURES</b></p>	<b>DAI Policy #:</b> 500.30.54	<b>Page</b> 1 of 11
	<b>Original Effective Date:</b> 03/03/14	<b>New Effective Date:</b> 01/17/24
	<b>Supersedes:</b> 500.30.54	<b>Dated:</b> 01/11/21
	<b>Administrator's Approval:</b> Sarah Cooper, Administrator – 12/22/23	
<b>Required Posting or Restricted:</b>		
<input checked="" type="checkbox"/> <b>PIOC</b> <input checked="" type="checkbox"/> <b>All Staff</b> <input type="checkbox"/> <b>Restricted</b>		
<b>Chapter:</b> 500 Health Services		
<b>Subject:</b> Informed Consent and Right to Refuse Treatment		
<b>Guidance Document</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>		

**POLICY**

All Division of Adult Institution facilities shall ensure all examinations, treatments and procedures are governed by informed consent practices. PIOC have the right to make informed decisions regarding health care, including the right to refuse care.

**REFERENCES**

Standards for Health Services in Prisons – National Commission on Correctional Health Care, 2018, P-G-05 – Informed Consent and Right to Refuse, A Minor's Right to Consent to Treatment and Authorize Disclosure of PHI, UW Health, November 2015

Wisconsin Statutes s. 302.38 – Medical care of prisoners

Wisconsin Statutes s. 302.385 – Correctional health care

Wisconsin Statutes s. 48.375 – Parental consent required prior to abortion; judicial waiver procedure

Wisconsin Statutes s. 48.979 – Delegation of power by parent

Wisconsin Statutes s. 51.61(6) – Patient rights

Wisconsin Statutes s. 51.47 – Alcohol and other drug abuse treatment for minors without parental consent

Wisconsin Statutes ss. 154.03-154.15 – Declaration to Physicians (Wisconsin Living Will)

Wisconsin Statutes Ch. 155 – Power of Attorney for Health Care

Wisconsin Statutes s. 252.11 (1m) – Sexually transmitted disease

Wisconsin Statutes s. 252.15 (3m)(c) – HIV tests

Wisconsin Statutes s. 448.30 – Medical Practices – Information on alternate modes of treatment.

Wisconsin Administrative Code s. Med 18.05 – Rules of the Medical Examining Board); The Joint Commission (TJC) Standards, RI 01.01.03, 01.02.01, 01.03.01, 01.04.01 (2009 manual) CMS Conditions of Participation: Surgical Services Standard 482.51, Tag A250

Wisconsin Lawyer, September 2014, “Making Medical Decisions for Minors”

DAI Policy 300.00.27 – Medical Guardianship

DAI Policy 500.00.01 – Advance Directives for Health Care

DAI Policy 500.30.20 – Involuntary Administration of Psychotropic Medications

DAI Policy 500.80.26 – Medication Adherence and Misuse

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**DEFINITIONS, ACRONYMS AND FORMS**

Advanced Care Provider (ACP) – Provider with prescriptive authority.

Advance Directive – Written and witnessed instructions made while the person is mentally competent which states how the person wants health care decisions to be made if the person becomes incapacitated or cannot express their wishes. Wisconsin Statutes recognize two forms of advance directive: Declaration to Physicians (Living Will) and Power of Attorney for Health Care.

AODA – Alcohol and Other Drug Abuse

BHS – Bureau of Health Services

DOC – Department of Corrections

DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI)

DOC-3028 – Authorization for Medical and/or Surgical Treatment

DOC-3220 – Refusal of Recommended Health Care

DOC-3263 – Consent/Refusal to Test for HIV Antibody

DOC-3347 – Medical Appointments – Offsite

DOC-3367 – Authorization and Consent to Surgery and Drug Administration

DOC-3391 – Activation/Deactivation of Declaration to Physicians

DOC-3401 – Informed Consent for Psychotropic Medication

DOC-3402 – Consent for Orthodontic Treatment for Adults

DOC-3403 – Consent for Orthodontic Treatment for Juveniles

DOC-3404 – Consent for Referral of Orthodontic Treatment

DOC-3414 – Authorization and Consent for Root Canal Treatment (Endodontics) and Drug Administration

DOC-3416 – Authorization and Consent for Root Canal Treatment (Endodontics) and Drug Administration for Juveniles

DOC-3417 – Authorization and Consent for Surgery and Drug Administration for Juveniles

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DOC-3429 – Consent/Refusal Hepatitis C Treatment

DOC-3429A – Consent/Refusal Hepatitis C Treatment Genotype 1

DOC-3442 – Authorization and Consent for Dental Hygiene Treatment

DOC-3535 – Patient Consent for Palliative Care Program and Request to Discontinue

DOC-3544 – Adult Informed Consent Psychotropic Medication – Clozaril

DOC-3593 – Informed Consent Relating to Risks Associated with the Use of Oral Bisphosphonate

DOC-3614 – Activation/Deactivation of Power of Attorney for Health Care

DOC-3615 – Acknowledgment of Revocation of Power of Attorney for Health Care

DOC-3616 – Acknowledgment of Revocation of Declaration to Physicians

DOC-3617 – Patient Revocation of Declaration to Physicians

DOC-3618 – Patient Revocation of Power of Attorney for Health Care

F-44702 – Vaccination Administration Record

EMR – Electronic Medical Record

Emancipated Minor – A minor who is married, has given birth or is freed from care, custody, and control of parents with little likelihood of returning.

Health Care Record (HCR) – Official confidential DOC record created and maintained for each patient consisting of all or some of the following components: Medical Chart, Dental Services Record, Psychological Records-Copies envelope, Medications Record envelope, Patient Request Folder, Psychological Services Unit Record, and other components as defined by the Bureau of Health Services.

HIM – Health Information Management

HIM Job Aids – A list of job aids to assist in EMR functionality

HIV – Human immunodeficiency virus

Informed consent – The agreement by a PIOC, or person authorized to consent for a PIOC, to a treatment, examination, or procedure after the PIOC is informed of all of the following: (1) material facts about the nature, benefits, consequences, and risks of the proposed treatment, examination, or procedure; (2) alternative treatments, examinations or procedures to the proposed treatment, examination, or procedure; and (3) the

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prognosis if the PIOC does not consent to the proposed treatment, examination, or procedure.

Life threatening situation – Conditions such as cardiac arrest, hemorrhage or being unresponsive which require immediate medical intervention to prevent certain death or serious permanent impairment.

OLC – Office of Legal Counsel

PIOC – Persons in Our Care

Power of Attorney for Health Care (POA-HC) – The designation, by an individual, of another as his or her health care agent for the purpose of making health care decisions on his or her behalf if the individual cannot, due to mental incapacity.

## **PROCEDURE**

### **I. Adults with Decision-Making Capacity**

- A. Adults may give informed consent or may refuse medical care for themselves if they are age 18 or older with decision-making capacity.
- B. Some adults with decision-making capacity may choose to involve family members, or other individuals, in the consent process.
  1. Some patients may want to defer to the decisions of the family decision maker, or other another individual.
  2. DOC may actively involve a family member, or other individuals selected by the PIOC, when the PIOC has signed a DOC-1163A – permitting the DOC to disclose PHI to that person.
  3. The PIOC shall provide the actual consent.
- C. The competent adult patient has the right to be informed and make decisions and to exclude others from the consent process.

### **II. Adults with an Activated POA-HC, Declaration to Physician, Guardian of the Person or Court-Ordered Treatment**

- A. When a PIOC has an activated POA-HC, the health care agent has authority to make medical decisions within the parameters of the POA-HC. See DAI Policy 500.00.01.
  1. Prior to contacting the health care agent, review the healthcare record (HCR) carefully to make sure that the PIOC has not previously revoked the POA-HC by signing a DOC-3617.
  2. If a PIOC objects to decisions of the health care agent, or otherwise objects to the implementation of the POA-HC, that may indicate a desire to revoke the POA-HC.
    - a. Offer the-patient a DOC-3617.
    - b. If the patient signs the form, the appropriate staff shall sign the DOC-3615.

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3. If at any time, a physician and/or psychologist believes that a PIOC has regained mental capacity, they shall complete the DOC-3614.
  - B. When a PIOC has a current Court Order appointing a guardian of the person, the guardian has authority to make medical decisions within the parameters of the Court Order Appointing Guardian. Review the Order carefully because it may limit the guardian's authority to make certain decisions. For example, a guardian may not consent to the forced administration of psychotropic medications
  - C. When a PIOC has a Court Order for specific treatment, follow the exact terms of the Order.
    1. PIOC shall be assessed and order reviewed to determine continuation of need.
    2. Depending on assessment and need, consult OLC.
    3. Follow 500.30.20 for involuntary psychotropic medication.
    4. Documentation shall be entered by ACP identifying specific treatment order(s) based on the court order.
  - D. When a PIOC has a valid Declaration to Physician, follow the terms of the document.
    1. Review the HCR to ensure the DOC-3391 has been completed to activate the document. If that has not occurred, authorized staff shall complete the form.
    2. Review the HCR to be sure the patient has not revoked the document by signing a DOC-3617.
    3. If at any time, the patient expresses the desire to revoke the Declaration to Physicians, provide him or her with a DOC-3617 and follow the procedures on DOC-3616.
    4. If a physician believes at any time that the patient has regained mental capacity, the physician shall complete the DOC-3391 – to deactivate the document.
  - E. The legal documents mentioned above shall be scanned in the HCR.
  - F. Health staff shall consult with OLC, as needed.
- III. Adults Who May Lack Decision-Making Capacity**
- A. If the patient has executed a valid POA-HC that has not been activated, and the PIOC appears to lack decision-making capacity, follow the procedure to activate the POA-HC using the DOC-3614.
  - B. If a patient appears to lack decision-making capacity, and does not have a POA-HC or guardian, the procedures for referring the patient to OLC for a guardianship of the person shall be followed. See DAI Policy 300.00.27.

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#### **IV. Obtaining Consents**

- A. A separate informed consent for care is necessary for a PIOC with a health condition that requires diagnostic evaluation or prescribed treatment including:
1. Immunizations.
  2. Incision and drainage.
  3. Skin removal, including biopsies.
  4. Cauterization.
  5. All major and minor surgical procedures.
  6. Articular injections.
  7. Any other procedures in which there may be probability of major adverse risks.
  8. Certain psychotropic/neuroleptic medications.
  9. All invasive dental procedures.
  10. Dialysis.
- B. In accordance with State law, it is the responsibility of the ACP performing the procedure or providing the service to assure informed consent is obtained for treatments and procedures.
- C. The PIOC shall be informed by the ACP of all of the following:
1. Material facts about the nature, benefits, consequences, and risks of the proposed treatment, examination or procedure.
  2. Alternative treatments, examinations or procedures to the proposed treatment, examination, or procedure.
  3. Prognosis if the PIOC does not consent to the proposed treatment, examination or procedure.
- D. Other designated DOC health care staff may assist an ACP in providing the information and in obtaining signatures of a PIOC, or person authorized to act on behalf of the PIOC, and the health service staff witness, on informed consent forms, but they do so as agents of the ACP ensuring:
1. The completeness of the information and the obtaining of consent before providing medical care to the PIOC.
  2. Documentation of the circumstances under which PIOC consent is not obtained.
- E. The informed consent shall include all of the following:
1. The diagnosis, if known.
  2. Information about the treatment including nature and purpose of a proposed treatment, examination or procedure.
  3. The risks and benefits of a proposed treatment, examination or procedure.
  4. Alternatives, if known.
  5. The risks and benefits of the alternative treatment, examination or procedure.
  6. The prognosis if the treatment, examination or procedure is not undertaken.

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7. Signature of PIOC, or person authorized to act on behalf of the PIOC, and health services staff witness.
- F. Consent forms shall be scanned into the HCR.
- G. Available consent forms for care and treatment are listed in the Reference section of this policy.
- H. Informed consent is not required in the following circumstances:
1. A life-threatening emergency that requires immediate medical intervention to prevent death or serious permanent impairment.
  2. Emergency care for a patient who does not have the mental capacity to provide informed consent and for whom there is not sufficient time to obtain a court order.
  3. When there is a court order to provide the medical treatment or procedure.
  4. Certain public health matters.
- I. In the situations described in Section I.1- 4 above, where informed consent is not obtained, all aspects of the patient's medical condition and reasons for interventions shall be documented in the patient's HCR, or in the Dental Record, when applicable.
- J. In an emergency, in case of doubt concerning the validity or applicability of an advance directive directing the withholding treatment, emergency medical care shall be provided.
- K. In an emergency, when possible, attempts shall continue to obtain consent of the patient or the patient's authorized representative while emergency care is given.
- L. The emergency exception shall not to exceed 48 hours without documentation of reasonable attempts made to obtain signed consent from the patient or patient's authorized representative.
- M. Under rare circumstances, other exceptions to the requirement of informed consent may be applicable. The BHS Director of Healthcare Administration, Medical Director, Director of Nursing, an OLC Attorney, or a DAI Administrator/designee shall be consulted for assistance in determining whether an exception applies.
- N. HSU staff cannot provide consent for patient treatment.
- V. Obtaining Consent when the Patient's Representative is Not Present**
- A. Consent from an authorized representative can be obtained by telephone, or forms of electronic transmission, such as email, or fax.

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- B. Consent shall be documented in the HCR indicating that basic information about the procedure, its risks and expected results, and alternative treatments, if any, were disclosed to the representative.
- C. It is the responsibility of the ACP to ensure that an authorized representative consenting to medical care for a patient is informed of the information described above in Section V.
- D. Confirming documents shall be scanned into the HCR.
- E. When consent is provided verbally by telephone, the following procedures shall be followed:
  - 1. A second person shall be present to witness the consent by telephone.
  - 2. Documentation in the HCR shall include witness name, and the individual's relationship to the PIOC.
  - 3. The witness shall counter-sign the consent form along with the ACP who obtains the telephone consent.

## **VI. Lapse of Consent**

- A. A new consent shall be obtained if the PIOC condition or other aspects of the situation surrounding the particular procedure have changed since the original consent was given.
- B. A new consent shall be obtained if the PIOC has been discharged and readmitted to the facility.
- C. An informed consent shall be obtained for each procedure or course of treatment.
- D. Consent given to a continuous course of treatment (e.g., dialysis, chemotherapy, radiation therapy, incision and drainage or wound debridement) over a period of weeks or months shall be renewed if the patient's condition warrants a change in treatment.

## **VII. Refusal of Treatment**

- A. A PIOC who refuses a specific aspect of recommended health care or treatment shall be provided with an explanation of the health benefits, risks or consequences of the health care or treatment, and shall be assured that a refusal at a particular time, does not result in a waiver of his or her right to consent to subsequent health care or treatment.
- B. A PIOC shall not be punished for exercising the right to refuse treatment.
- C. A PIOC Guardian of the Person or health care agent may refuse treatment on behalf of the PIOC, if that is within the authority of the guardian/agent per the Guardianship Order or POA-HC.



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- D. The PIOC, or authorized representative, shall have an opportunity to ask questions to elicit a better understanding of the treatment or procedure, in order to make an informed decision to refuse the proposed health care or treatment.
- E. Any refusal shall be documented on a DOC-3220 and scanned into the HCR or in the Dental Record, when applicable. Documentation shall include:
1. The description of treatment or procedure being refused.
  2. Education regarding adverse consequences to the PIOC health that may occur as a result of the refusal.
  3. Reason for the refusal per the PIOC.
  4. Signature of the PIOC, or authorized representative, who is refusing.
  5. Signature of the healthcare staff member who is witnessing the signature of the PIOC, or authorized representative.
- F. If a PIOC refuses to sign the DOC-3220, the health care staff member shall simply write "refused to sign" and sign as a witness.
1. An additional health care staff member shall witness the refusal and sign the form.
  2. If there is only one health staff on duty, it is permissible to have security staff sign as a second witness.
- G. If the PIOC is of sound mind and judgment and is refusing the recommended healthcare, the ACP shall determine next steps in the PIOC plan of care.
- H. If the refusal could have a significant risk to life or limb, the BHS Director of Healthcare Administration, BHS Medical Director, BHS Director of Nursing, an OLC Attorney, or a DAI Administrator/designee shall be consulted to determine if legal steps (e.g., petition for guardianship, mental health commitment, protective placement, or court-ordered treatment) should be sought for involuntary evaluation or treatment.
- I. Scan the completed DOC-3220 in the HCR and message the ACP.
- J. If the refused appointment is an off-site appointment, also document the refusal in the HCR.
- K. Refused appointments may be rescheduled based on a clinically appropriate interval based on ACP recommendation.
- L. PIOC are required to report to an appointment for any refusal of health care. For PIOC unable or unwilling to report to their on-site appointment site (e.g., in segregation or observation status), the ACP or nurse shall see the PIOC face-to-face to complete the DOC-3220, and scan into the HCR.
- M. Any PIOC who refuses care shall be considered for discussion at multidisciplinary team meetings to reevaluate the treatment plan.

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N. When a PIOC refuses to take prescribed medications, follow DAI Policy 500.80.26.

**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

<b>Facility:</b> Name		
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<b>Will Implement</b> <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
<b>Warden's/Center Superintendent's Approval:</b>		

**REFERENCES**

**DEFINITIONS, ACRONYMS AND FORMS**

**FACILITY PROCEDURE**

- I.
  - A.
    - 1.
      - a.
  - B.
  - C.
- II.
  - A.
  - B.
  - C.