

 <p style="text-align: center;">DIVISION OF ADULT INSTITUTIONS</p> <p style="text-align: center;">POLICY AND PROCEDURES</p>	DAI Policy #: 500.30.54	Page 1 of 12
	Original Effective Date: 03/03/14	New Effective Date: 11/25/14
	Supersedes: 500.30.54	Dated: 03/03/14
	Administrator's Approval: Cathy A. Jess, Administrator	
Required Posting or Restricted:		
<input checked="" type="checkbox"/> Inmate <input checked="" type="checkbox"/> All Staff <input type="checkbox"/> Restricted		
Chapter: 500 Health Services		
Subject: Informed Consent and Right to Refuse Treatment		

POLICY

All Division of Adult Institution facilities shall ensure all examinations, treatments and procedures are governed by informed consent practices which support the ethical principles of an inmate patient's right to information and knowledge about healthcare, invasive procedures, and more importantly allows the inmate patient to make an informed decision to consent or refuse the recommended health care intervention.

REFERENCES

Standards for Health Services in Prisons – National Commission on Correctional Health Care, 2014, P-I-05 – Informed Consent and Right to Refuse

A Minor's Right to Consent to Treatment and Authorize Disclosure of PHI, UW Health, August 2014

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 500.80.26 – Medication Non-Adherence

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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 inmate patient is mentally competent which states how the patient wants health care decisions to be made if the inmate patient becomes incapacitated or cannot express his or her 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-3021 – Progress Notes

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

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

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

DOC-3627 – Informed Consent for the Treatment of Obstructive Sleep Apnea With Oral Appliances

F-44702 – Vaccination Administration Record

ECT – Electroconvulsive Therapy

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.

HIV – Human immunodeficiency virus

Informed consent – The agreement by a patient, or person authorized to consent for a patient, to a treatment, examination, or procedure after the patient 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 prognosis if the patient does not consent to the proposed treatment, examination, or procedure.

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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

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 inmate patients may want to defer to the decisions of the family decision maker, or other individual.
 2. DOC may actively involve a family member, or other individual selected by the inmate patient, when the inmate patient has signed a DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI) permitting the DOC to disclose PHI to that person.
 3. The inmate patient shall provide the actual consent.
- C. The competent adult inmate 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 an inmate patient 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 Medical Chart carefully to make sure that the inmate patient has not previously revoked the POA-HC by signing a DOC-3617 – Patient Revocation of a Power of Attorney for Health Care.
 2. If an inmate patient 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 inmate patient a DOC-3617.
 - b. If inmate patient signs the form, the appropriate staff shall sign the DOC-3615 – Acknowledgment of Patient Revocation of a Power of Attorney for Health Care.
 3. If at any time, a physician and/or psychologist believes that an inmate patient has regained mental capacity, he/she shall complete the DOC-3614 – Activation/Deactivation of Power of Attorney for Health Care.

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- B. When an inmate patient 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 an inmate patient has a Court Order for specific treatment, follow the exact terms of the Order and make sure it remains in effect.
- D. When an inmate patient has a current activated Declaration to Physician, follow the terms of the document.
 - 1. Review the Medical Chart to ensure the DOC-3391 – Activation/Deactivation of Declaration to Physicians, has been completed to activate the document. If that has not occurred, authorized staff shall complete the form.
 - 2. Review the Medical Chart to be sure the inmate patient has not revoked the document by signing a DOC-3617 – Patient Revocation of Declaration to Physicians.
 - 3. If at any time, the inmate 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 – Acknowledgement of Revocation of Declaration to Physicians.
 - 4. If a physician believes at any time that the inmate patient has regained mental capacity, the physician shall complete the DOC-3391 – Activation/Deactivation of Declaration to Physicians, to deactivate the document.
- E. The legal documents mentioned above shall be filed in the Medical Chart, before the standard dividers.
- F. Health staff shall consult with OLC, as needed.

III. Adults Who May Lack Decision-Making Capacity

- A. If the inmate patient has executed a valid POA-HC that has not been activated, and the inmate patient appears to lack decision-making capacity, follow the procedure to activate the POA-HC using the DOC-3614 – Activation/Deactivation of Power of Attorney for Health Care.
- B. If an inmate patient appears to lack decision-making capacity, and does not have a POA-HC or guardian, the procedures for referring the inmate patient to OLC for a guardianship of the person shall be followed. See DAI Policy 300.00.27.

IV. Consent for Medical Care for Minors

- A. A small number of minors (under age 18 years) are incarcerated in DAI facilities.

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- B. In most cases, a parent, guardian, or other authorized representative, shall give consent for medical care for a minor. A parent who has been denied placement rights lacks legal authority.
- C. Foster parents or stepparents may only sign consent forms for their foster or step children when they are legally authorized to do so. The documentation shall be placed in the Medical Chart, on top of the standard dividers.
- D. A parent may delegate decision making authority for their child in writing to another adult for up to one year by completing the Wisconsin Power of Attorney Delegating Parental Power.
- E. **Emergency Medical Care**
In the event of a life-threatening injury or illness and emergency treatment is needed, and the parent or guardian is unavailable, parental or guardian's consent can be presumed. In addition, the following must apply:
1. Where delay in treatment of an illness or injury would increase risk of harm to the child, such as serious infection, extreme pain or aggravation of the condition, and where it would be unreasonable for parents or guardian to withhold consent, the ACP may proceed to treat.
 2. The ACP shall continue to attempt to seek parental consent while providing necessary emergency care and document why consent was not obtained and the continued efforts made to obtain parental consent in the minor's medical record.
- F. Wisconsin Statutes authorize minors to make certain medical decisions.
1. Emancipated minors: No statute specifically authorizes emancipated minors to consent to their own general health care. Consult with OLC.
 2. Sexually transmitted disease: A physician may examine, diagnose and treat a minor for a sexually transmitted disease without obtaining parental consent.
 3. Pregnancy/obstetrical care: A minor may obtain pregnancy testing and obstetrical care or screening, per U.S. Supreme Court cases. Consult with OLC.
 4. Rape/sexual assault treatment: A minor may have authority to obtain treatment for rape or sexual assault even though no statute specifically grants that authority. Consult with OLC.
 5. HIV testing: A minor 14 years and older may consent to be tested for HIV.
 6. Abortion: Consent of both the minor and parent is required for abortions in most cases, but there is provision for judicial bypass.
 7. AODA treatment: A minor 12 years and older may consent to certain outpatient treatment for alcohol and other drug abuse and inpatient treatment for detoxification (for up to 72 hours) without parental approval except for:
 - a. A surgical procedure.
 - b. Administration of a controlled substance (except for detoxification).

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- c. Inpatient admission, except for admission for detoxification up to 72 hours.
8. Mental health treatment: A minor 14 years and older may consent to mental health treatment in a treatment facility when parent also consents. There is a provision for judicial override under some circumstances. Consult with OLC.
9. Consent for minor children: A minor who is a parent has legal authority to make medical decisions for the minor child.

V. Obtaining Consents

- A. A separate informed consent for care is necessary for an inmate patient 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 inmate patient 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 inmate patient 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 an inmate patient, or person authorized to act on behalf of the inmate patient, 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 inmate patient.
 2. Documentation of the circumstances under which inmate patient consent is not obtained.

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- 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.
 7. Signature of inmate patient, or person authorized to act on behalf of the inmate patient, and health services staff witness.
- F. When an inmate patient is a minor, or an adult with a Guardian of the Person or an Health Care Agent under an activated POA-HC, the DOC shall provide the parent, guardian or health care agent with the required information, and ask that he or she give consent, and sign appropriate documents to the extent of the scope of the guardian's or agent's authority.
- G. Consent forms shall be filed in the Medical Chart, Consents/Refusals Section.
- H. Available consent forms for care and treatment are listed in the Reference section of this policy.
- I. 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 an inmate 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.
- J. In the situations described in Section I.1- 4 above, where informed consent is not obtained, all aspects of the inmate patient's medical condition and reasons for interventions shall be documented in the DOC-3021 – Progress Notes of the inmate patient's Medical Chart, or in the Dental Record, when applicable.
- K. 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.
- L. In an emergency, when possible, attempts shall continue to obtain consent of the inmate patient or the inmate patient's authorized representative while emergency care is given.

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- M. The emergency exception shall not to exceed 48 hours without documentation of reasonable attempts made to obtain signed consent from the inmate patient or inmate patient's authorized representative.
- N. Under rare circumstances, other exceptions to the requirement of informed consent may be applicable. The BHS Director, BHS Medical Director, BHS Director of Nursing, an OLC Attorney, or a DAI Administrator/designee shall be consulted for assistance in determining whether an exception applies.
- O. HSU staff cannot provide consent for inmate patient treatment.

VI. Obtaining Consent when the Inmate 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.
- B. Consent shall be documented in a DOC-3021 – Progress Notes 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 an inmate patient is informed of the information described above in Section V.
- D. Confirming documents shall be filed in the inmate patient's Medical Chart, Consents/Refusals Section.
- 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. Document in a DOC-3021 the time the telephone consent is obtained, from whom, and the individual's relationship to the inmate patient.
 - 3. The witness shall counter-sign the consent form along with the ACP who obtains the telephone consent.

VII. Lapse of Consent

- A. A new consent shall be obtained if the inmate patient's 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 inmate patient 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

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debridement) over a period of weeks or months shall be renewed if the inmate patient's condition warrants a change in treatment.

VIII. Refusal of Treatment

- A. An inmate patient 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. An inmate patient may not be punished for exercising the right to refuse treatment.
- C. An inmate patient's Guardian of the Person or health care agent may refuse treatment on behalf of the inmate patient, if that is within the authority of the guardian/agent per the Guardianship Order or POA-HC.
- D. The inmate patient, 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 – Refusal of Recommended Health Care filed in the Medical Chart, Consents/Refusals Section, 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 inmate patient's health that may occur as a result of the refusal.
 - 3. Reason for the refusal per the inmate patient.
 - 4. Signature of the inmate patient, or authorized representative, who is refusing.
 - 5. Signature of the health care staff member who is witnessing the signature of the inmate patient, or authorized representative.
- F. If an inmate patient refuses to sign the DOC-3220 – Refusal of Recommended Health Care, 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 inmate patient is of sound mind and judgment and is refusing the recommended health care, the ACP shall determine next steps in the inmate patient's plan of care.

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- H. If the refusal could have a significant risk to life or limb, the BHS Director, 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. File the completed DOC-3220 – Refusal of Recommended Health Care in the Medical Chart, Consents/Refusals Section and flag it for review by the appropriate ACP. The ACP shall initial and date the form when reviewed.
- J. If the refused appointment is an off-site appointment, also document the refusal on DOC-3347 – Medical Appointments – Offsite, located on top of the standard dividers in the front of the Medical Chart.
- K. Refused appointments may be rescheduled based on a clinically appropriate interval based on ACP recommendation.
- L. Inmate patients are required to report to an appointment for any refusal of health care. For inmate patients 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 inmate patient face-to-face to complete the DOC-3220 – Refusal of Recommended Health Care, and file in the Medical Chart, Consents/Refusals Section.
- M. Any inmate patient who refuses care shall be considered for discussion at multidisciplinary team meetings to reevaluate the treatment plan.
- N. When an inmate patient refuses to take prescribed medications, follow DAI Policy 500.80.26.

Bureau of Health Services: _____ **Date Signed:** _____
 James Greer, Director

_____ **Date Signed:** _____
 Ryan Holzmacher, MD, Medical Director

_____ **Date Signed:** _____
 Mary Muse, Nursing Director

Administrator’s Approval: _____ **Date Signed:** _____
 Cathy A. Jess, Administrator

DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES

Facility: Name		
Original Effective Date:	DAI Policy Number: 500.30.54	Page 12 of 12
New Effective Date: 00/00/00	Supersedes Number:	Dated:
Chapter: 500 Health Services		
Subject: Informed Consent and Right to Refuse Treatment		
Will Implement <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
Warden's/Center Superintendent's Approval:		

REFERENCES

DEFINITIONS, ACRONYMS, AND FORMS

FACILITY PROCEDURE

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