

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>	EFFECTIVE DATE 02/01/2015	NUMBER 03.04.105
	SUBJECT <b>INFORMED CONSENT TO MEDICAL CARE</b>	
SUPERSEDES 03.04.105 (12/13/99)		AUTHORITY MCL 333.5127; 333.9132; 722.4; 791.203; 330.1264 333.5133
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**POLICY STATEMENT:**

Bureau of Health Care Services (BHCS) staff shall obtain informed consent when required before providing medical care to a prisoner.

**RELATED POLICIES:**

- 03.04.107 Advance Directives for Health Care
- 04.06.120 Hunger Strike
- 04.06.183 Voluntary and Involuntary Treatment of Mentally Ill Prisoners

**POLICY:**

DEFINITIONS

- A. Adult Prisoner: A prisoner who is 18 years of age or older.
- B. Emancipated Minor: A person under 18 years of age, who is lawfully married, or for whom a court has issued an order of emancipation.
- C. Informed Consent: The prisoner's agreement decision whether to receive medical care (i.e., medical treatment or procedures) after the nature, consequences, risks and alternatives concerning the proposed care have been explained.
- D. Medical Provider: A qualified health professional who is a licensed physician, physician assistant or nurse practitioner in the State of Michigan.
- E. Minor Prisoner: A prisoner who is under 18 years of age.
- F. Qualified Health Professional (QHP): A health care professional licensed by the State of Michigan or registered/certified to practice within the scope of his/her training.
- G. Prisoner Health Record: All information recorded in electronic form, paper form, or any other medium that pertains to a prisoner's mental and/or physical healthcare, history, diagnosis, prognosis, or condition that is maintained by a health care provider.

GENERAL INFORMATION

- H. Informed consent shall be obtained when consent is required under prevailing medical community standards before medical care is provided, unless the medical treatment or procedure is authorized by state or federal law or Department policy (e.g., blood sample for mandatory DNA or HIV testing or, body cavity search), including situations set forth in this policy.
- I. When informed consent is required, the "Informed Consent to Surgery, Anesthetics, Medical Treatment and Procedures" form (CHJ-149) shall be used to obtain consent from a prisoner to perform invasive or surgical procedures or to administer general anesthesia. However if the prisoner is a minor, consent must be obtained from his/her parent or guardian unless the prisoner is emancipated. For dental surgery, "Surgical Removal of Teeth" form (CHJ-103) shall be used instead of Form CHJ-149.
- J. When informed consent is required from a parent or guardian to provide a minor prisoner with medical care not addressed in Paragraph I, the "Consent to Routine, Non-Surgical Medical Care of a Minor" form (CHJ-217) shall be used.

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- K. Verbal consent may be sufficient whenever informed consent is required from a prisoner due to an emergency capable of providing informed consent, to provide the prisoner with medical care not addressed in Paragraph I.
- L. A prisoner who appears to be engaged in a hunger strike shall be managed as set forth in PD 04.06.120 "Hunger Strike."
- M. This policy does not apply to involuntary mental health treatment provided to prisoners pursuant to PD 04.06.183 "Voluntary and Involuntary Treatment of Mentally Ill Prisoners."
- N. Medical and mental health staff shall obtain informed consent from prisoners before reporting information about prior sexual victimization that did not occur in an institutional setting. A copy of the prisoner's informed consent shall be maintained for the Prison Rape Elimination Act (PREA) audit.

#### ADULT PRISONERS UNABLE TO GIVE CONSENT

- O. An adult prisoner is presumed capable of providing informed consent unless s/he has a mental illness and/or serious cognitive or intellectual impairment that significantly impairs judgment, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life. Such a prisoner is incapable of providing informed consent for the specific medical care being offered at the time it is offered.
- P. When an adult prisoner requires emergency medical care due to a non-life threatening condition and is deemed by the treating physician to be incapable of providing informed consent, informed consent shall be obtained from one of the following before the medical care is provided:
  1. The designated patient advocate, if the prisoner has executed an advance directive pursuant to PD 03.04.107 "Advance Directives for Health Care."
  2. The legal guardian of the prisoner, if one has been appointed.
  3. The prisoner's spouse if there is no designated patient advocate or legal guardian.
  4. The prisoner's parent, adult child or adult sibling if there is no designated patient advocate, legal guardian or spouse.
- Q. If unable to contact any of the persons identified in Paragraph P, the Administrator of the Bureau of Health Care Services (BHCS) shall contact the Administrator of the Office of Legal Affairs (OLA). The Administrator of OLA shall in turn contact the Department of Attorney General if it is necessary to appoint a guardian or to initiate other legal proceedings.
- R. In a life threatening emergency when there is inadequate time to obtain informed consent, or the prisoner cannot give consent due to his/her medical condition the prisoner may receive medical care to the extent deemed medically necessary. The emergency care shall be brought to the attention of the Administrator of BHCS or designee as soon as possible. If continued medical care is necessary, and the prisoner remains unable to give informed consent, consent shall be obtained as set forth in Paragraphs O and P prior to providing further medical care.
- S. Unless there is a legal guardian or a designated patient advocate, an adult prisoner with a chronic medical condition who is deemed by the treating physician to be incapable of providing informed consent shall be referred to the Administrator of BHCS or designee as soon as the prisoner's competency becomes an issue. The Administrator of BHCS or designee shall contact the Administrator of OLA who shall in turn contact the Department of Attorney General if it is necessary to appoint a guardian or to initiate other legal proceedings.

#### MINOR PRISONERS

- T. A minor prisoner may give informed consent under the following circumstances:
  1. S/he is being offered medical care for a venereal disease or Human Immunodeficiency Virus

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(HIV);

2. S/he is being offered medical care for substance abuse;
  3. S/he is being offered prenatal or pregnancy-related medical care, excluding abortion; or,
  4. S/he is being offered medical care for other than reproductive sterilization (e.g., vasectomy; tubal ligation) and attempts to locate the prisoner's parent or guardian have been unsuccessful. Attempts by BHCS staff to locate the parent or guardian shall be documented in the prisoner's health record.
- U. Informed consent is not required to provide medical care to a minor prisoner if there is a life-threatening emergency where there is inadequate time to obtain informed consent. In such cases, the minor prisoner may receive medical care to the extent deemed medically necessary. The emergency care shall be brought to the attention of the Administrator of BHCS or designee as soon as possible. Informed consent is required to be obtained prior to providing any continued medical care.
- V. Except as set forth in Paragraphs R and S; informed consent must be obtained from the minor prisoner's parent or guardian prior to providing medical care to a minor prisoner. The parent's or guardian's consent shall be documented on the "Consent to Routine, Non-Surgical Medical Care of a Minor" form (CHJ-217) or the "Informed Consent to Surgery, Anesthetics, Medical Treatment and Procedures" form (CHJ-149). For dental surgery, Form CHJ-103 the "Information Concerning Surgical Removal of Teeth" or form CHJ-103A "Root Canal Treatment" shall be used instead of Form CHJ-149.

#### REFUSAL OF RECOMMENDED MEDICAL CARE REQUIRING INFORMED CONSENT

- W. If an adult prisoner refuses medical care and the refusal is not deemed by the medical provider to pose a serious threat to the prisoner's health, the refusal shall become part of the prisoner's health record. The recommended care will not be provided.
- X. If an adult prisoner refuses recommended medical care that is necessary to prevent permanent or serious ill effects other than death, a medical provider shall meet with the prisoner, determine capacity, and to fully explain the need for the treatment. If the prisoner continues to refuse to consent, the refusal shall be documented on Form CHJ-147 "Release from Responsibility for Medical Treatment." The recommended care will not be provided.
- Y. If an adult prisoner refuses medical care deemed necessary by a medical provider to prevent death, the medical provider shall meet with the prisoner to fully explain the need for the medical care. The information provided to the prisoner shall be fully documented in the prisoner's health record. If the prisoner continues to refuse to consent, the medical provider shall contact the Administrator of BHCS or designee. The Administrator of BHCS or designee shall contact the Administrator of OLA, who shall contact the Department of Attorney General if it is necessary to appoint a guardian or initiate other legal proceedings.
- Z. If a parent or legal guardian of a minor prisoner, or a minor prisoner capable of providing informed consent for one of the reasons set forth in Paragraph S, refuses medical care recommended for the prisoner, a medical provider shall meet with the prisoner or shall contact the parent/guardian to fully explain the need for the medical care. If the prisoner or parent/guardian continues to refuse to consent, the medical provider shall contact the Administrator of BHCS or designee, who shall contact the Administrator of OLA who shall contact the Department of Attorney General if it is necessary to appoint a guardian or initiate other legal proceedings.

#### OPERATING PROCEDURES

- AA. The BHCS Administrator shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive. Procedures shall be completed within 60 calendar days after the effective date of this policy directive.

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AUDIT ELEMENTS

- BB. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures."

APPROVED: DHH 12/19/14