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Policy Area Quality & Risk Management

Applicability WA - Providence St. Mary MC

## Consent for Treatment

### SCOPE:

All providers and caregivers within Providence St. Mary Medical Center (PSMMC) or Providence Medical Group-Walla Walla (PMG) who are involved in the patient consent process.

### PURPOSE:

To provide guidance in regards to the informed consent process, including the roles and responsibilities of the treating provider as well as Providence caregivers.

Verifying and documenting the patient's consent for a procedure on the Consent for Operation or Procedure form; To describe the procedures for:

- Handling special situations such as patients with limited English proficiency or emergency situations.
- Identifying the persons authorized to consent to a procedure.

### DEFINITIONS:

- **General consent:**
  - For PSMMC: General consent is obtained when the patient, or if the patient is legally incompetent to consent, the patient's legal representative signs under the conditions of admission listed on the registration form used in the admitting process. A blood count is an example of a "simple and common" procedure which is included in the general consent. General consent for care and treatment must be obtained from an adult patient with decision-making capacity or (if the patient is incompetent to consent) a person legally authorized to consent on behalf of the patient .
  - For PMG: General consent is obtained when the patient or (if the patient is

incompetent to consent) the patient's legal representative signs during the registration process. General consent for care and treatment must be obtained from an adult patient with decision-making capacity or (if the patient is incompetent to consent) a person legally authorized to consent on behalf of the patient .

- **Informed consent:** A patient is given (in a language or means of communication he/she understands) the information needed in order to consent to a specific procedure or treatment which is known to have significant risks associated with it. If the patient lacks decision making capacity, or is deemed legally incompetent, the same applies to the patient's surrogate decision maker. It must be presented by the LIP doing the procedure, except in those unique circumstances, such as a PICC line placement where the team member responsible for doing the procedure would be responsible for obtaining the informed consent. As a general rule, the LIP is responsible for obtaining informed consent; there is one exception to this rule; The RT receives informed consent on behalf of the radiologist for CT studies with contract and must include the discussion of the risks, benefits, alternatives and the alternative of not doing the procedure or treatment.
- Decision-Making Capacity: Decision-making capacity refers to the capacity of a person to make medical decisions on their own behalf. Adult patients are presumed to be competent and to have decision-making capacity unless otherwise documented.
- Competency
- **Invasive Procedures:** Invasive procedures are defined by Medical Staff Bylaws Section 11.3 (See Appendix C for a more comprehensive list.)
- **Licensed Independent Practitioner (L.I.P.)** An L.I.P. is a health care provider licensed by the state of WA and duly qualified to provide independent care in the hospital. M.D.'s, D.O.'s, ARNP's and midwives are L.I.P.'s. Note: although Physician Assistants are not L.I.P.'s, they are able to provide patients with informed consent for procedures that they will perform under the sponsorship of a physician.

## POLICY STATEMENT:

Caregivers will take all reasonable steps to assure the necessary consents for admission, hospital, and medical treatment are obtained in writing from the patient (or his/her legal representative) in accordance with the applicable standards, regulations, and laws of the State of Washington.

1. **A general consent** is included on the conditions of admission form. This general consent is obtained in writing (whenever possible) from the patient or (if the patient is incompetent to consent) his/her legal representative by the hospital staff at the time of admission or registration for hospital services.
2. **Informed consent is required for procedures or tests that are complex, invasive, and/or involve the risk of serious injury**, e.g., blood transfusions, chemotherapy, surgery, anesthesia or analgesia, or non-routine diagnostic procedures such as myelograms, arteriograms, and pyelograms. Appendix C provides a list of many procedures that should be considered to be "invasive".
3. **Responsibility of the Licensed Independent Practitioner (L.I.P.)**. The L.I.P. is responsible for identifying and explaining the procedures requiring informed consent to the patient as well as documenting that the patient has given informed consent. L.I.P.'s are responsible for disclosing

to their patients information that they know, or should know, would be regarded as significant by a reasonable person in the patient's condition and circumstances in order for the patient to accept or reject the proposed treatment or procedure. The explanation should include:

- a. The nature of the treatment or procedure;
  - b. The risks, complications, and expected benefits or effects of the treatment or procedure;
  - c. Any alternatives to the treatment or procedure and their risks and benefits; the risks and prognosis if the procedure is not done.
  - d. Who will actually perform the procedure
4. **Responsibility of the anesthesia/sedation physician.** If anesthesia or sedation is to be provided, the anesthesia or sedation physician must determine that the patient has been informed and acknowledges an understanding of the risks and consequences associated with the administration of anesthesia or sedation.
5. **Hospital staff's role.** The hospital staff's role in the informed consent process is to verify the patient's informed consent has been obtained by the responsible practitioner prior to performance of any invasive procedures. This verification is obtained in writing by the hospital staff whenever possible using the "Consent for Operation, Treatment or Procedure" form prior to the surgery or procedure.
6. **Failure to obtain the patient's consent** in accordance with applicable legal standards may result in a charge of battery, negligence, and/or unprofessional conduct.

## GENERAL PRINCIPLES OF CONSENT

1. **Who May Consent to a procedure/treatment?**  
See Appendix A: Who may give an informed consent? for more information regarding whether a patient can be deemed "competent" for purposes of giving consent.
  - a. **Competent Patient.** If the patient is competent, the patient has the right to consent to, or refuse, treatment. (See Appendix A)
  - b. **Minor/Incompetent Patient.** If the patient is incompetent, either as set forth by law (for example, because the patient is a minor), or by reason of a condition (for example, the patient is unconscious or demented), the determination of who may consent depends upon whether a third person has the legal capacity to consent to treatment on behalf of the patient.
  - c. **Patient should be alert and oriented.** In addition to being competent, a patient must also be alert and oriented in order to consent to or refuse treatment.
    - i. Reasonable effort should be made to obtain consent **prior** to the administration of a narcotic.
    - ii. If a patient appears alert and oriented but has received a narcotic recently that could affect the patient's judgment, then exploratory questions of the patient should be asked to test for alertness and orientation before obtaining the patient's consent.
      - I. Suggested questions include: "Can you please tell us your name

and today's date? Please explain what procedure is being done today" or "Please explain why you are being treated today".

- II. If the patient's appearance, mannerisms and/or responses to such exploratory questions do not support an alert and oriented state, then a third person who has the legal capacity to consent to treatment should complete the consent. Document observations and verbal responses in support of an alert and oriented state if it is questionable.

## 2. Communication Issues

### a. **Limited English Proficiency Patients**

- i. A L.I.P obtaining informed consent is responsible for determining whether their patient's or patient's lawfully authorized representative's preferred language is English.
- ii. If the preferred language is **not** English, all consent discussions must take place in the language of preference of the patient or lawfully authorized representative with the assistance of an interpreter.
- iii. Whenever possible, a professionally trained interpreter should be used. Refer to "[Interpreter Services](#)" policy and check the Northwest home page for information about [interpreter services](#).

### b. **Patients with Other Communication Barriers** - arrange for consent discussions to take place using a communication modality in which the patient is fluent.

- i. For the blind, verbal translation in the appropriate language is normally sufficient.
- ii. For the deaf, written communication or sign language through a professionally trained medical interpreter may be used. A deaf person may indicate that they require a sign language interpreter and they should be given the same consideration as a patient with limited English proficiency.
- iii. Other handicap manifestations such as muteness should be dealt with appropriately.

### c. **Documentation of interpreter Services**

- i. Enter in Epic who acted as interpreter and the language used.
- ii. At top of the consent form, check that a certified medical interpreter was used.
- iii. For pre-translated Consent Forms, the patient and witness will sign the form in the language of the patient. The English version of the form will be attached and kept as part of the permanent medical record.

## 3. **Consent by Telephone, Telegram, Facsimile or Letter**

- a. Consent for medical or surgical treatment should be obtained by telephone, telegram, facsimile, or letter only if the person(s) having legal capacity to consent for

the patient is not available in person.

- b. Consent by telephone should be witnessed by 2 people, at least one of whom must be licensed. The witnesses will remain on the line during the consent conversation. Both of these witnesses to the consent conversation will sign and note date and time of the conversation in the appropriate section of the consent form.
- c. In situations in which the consent is granted either by telephone, letter, facsimile, or telegram, the documentation in the medical record must be sufficiently extensive to explain why consent was obtained in this manner.

## PROCEDURE

1. **Documentation by L.I.P that Informed Consent has been Obtained** Documentation of the procedural L.I.P's communication with the patient will be documented by **one** of the following methods:
  - a. An informed consent document with risks, benefits, and alternatives included, and placed in the PSMMC chart, signed by the L.I.P.
  - b. The dictated report or progress note with risks, benefits, and alternatives included.
2. **Role of Hospital Staff Members in Verifying that Informed Consent has been Obtained** Staff's role in the consent process is limited to verifying that the L.I.P. has obtained the patient's informed consent before the L.I.P. performs the procedure.
  - a. Verify that the patient understands the procedure and has had questions answered by the L.I.P. **Contact the L.I.P. if the patient appears to be uninformed about the procedure or has questions which need to be addressed before the procedure is started.**
  - b. Obtain documentation of the patient's understanding by helping the patient to complete a PSMMC consent form.
  - c. Witness the signature of the patient or legal decision maker on the appropriate sections of the consent form.
  - d. When there is a change in the procedure that deviates from the signed consent form in the midst of a procedure, the LIP will make a reasonable attempt to obtain informed consent from the patient/surrogate decision maker, if available. The patient will be notified, at a minimum, immediately after they are able to comprehend the discussion post-procedure. The discussion(s) will be documented prior to discharge to the next level of care.
3. **PSMMC's Consent for Procedure Form**

This form is completed for all patients undergoing an operation or invasive procedure at PSMMC and documents that a patient is consenting to an invasive procedure. The PSMMC Procedural Consent form should be signed and witnessed at PSMMC prior to the procedure but after the L.I.P. has completed the informed consent process. The form has two unique sections:

  1. Consent for Procedure.
    - i. Complete the name of the procedure based upon the written order of the

proceduralist. Procedure names must be written in full; abbreviations are not acceptable.

ii. Complete the name of the provider who will do the procedure.

2. **Consent for transfusion of blood** and blood components.

i. **Process if Patient Refuses to Give Consent for a Transfusion.** If the procedural L.I.P. has discussed transfusion with the patient but the patient refuses to give consent for a transfusion then PSMMC staff should take the following steps:

- I. Offer flier "Frequently asked questions about blood transfusion".
- II. Have patient sign refusal option on consent form and witness.
- III. Ask the patient to read & sign the "Release of Liability regarding Refusal of Blood Products" form.
- IV. Contact the L.I.P.
- V. Notify the department in the event a procedure will be delayed.
- VI. Notify Blood Conservation Management Specialist.

ii. If the patient is receiving only a transfusion, a separate "Consent for Transfusion of Blood and Blood Components" #35230 may be used.

4. **Patient Confirmation/Witnessing/Copies**

All PSMMC Consent forms should be signed and witnessed at PSMMC, prior to the procedure but after the L.I.P. has completed the informed consent process

- a. **Patient's Signature.** After consideration of the information provided by the L.I.P., including an opportunity to ask questions, the patient (or his/her legal decision maker) should indicate their consent on each appropriate section of the consent form by signing at the bottom of the page. The date and time of signing should also be recorded, along with the signature of a witness.
- b. Expand this section to include patients without decision making capacity
- c. **Witnessing.** Generally, PSMMC staff serve as witness to the patient's signature but the witness may also be an L.I.P. Each section of the form may be witnessed separately.
- d. **Copies.** A copy of the consent form(s) signed by the patient (or his/her legal representative) may be given to the patient (or his/her legal representative) if they request it. A copy of the original signed consent form(s) shall be scanned in the patient's medical record..

5. **SPECIAL CIRCUMSTANCES IN WHICH A L.I.P IS NOT REQUIRED TO OBTAIN FULL INFORMED CONSENT**

There are two special circumstances in which a L.I.P. is not required to disclose all of the information that is required to secure the patient's informed consent.

- a. **Therapeutic privilege.** When the L.I.P. believes that fully informing the patient is not medically sound, because such a disclosure poses a serious threat to the patient, the L.I.P. may withhold the informed consent process.

Exercise of the therapeutic privilege requires the documented concurrence of a consulting L.I.P. who should not be directly involved in the patient's care. In addition, consultation from psychiatry and/or from the Ethics Committee may also be helpful.

Both L.I.P.'s should document in detail:

- i. The rationale for withholding the disclosure of the material information;
  - ii. The material information disclosed to the patient;
  - iii. Any material information not disclosed to the patient;
  - iv. What material information was disclosed or not disclosed to the closest relatives; and
  - v. That approval was secured for proceeding with the treatment or procedure when full disclosure to relatives was made.
- b. **Patient requests not to be informed.** Where the patient requests that he/she not be informed of the risks, etc. of a particular treatment or procedure, the L.I.P. should fully document in the patient's medical record the facts that resulted in this conclusion and that the patient has decision-making capacity. The L.I.P. should also document what, if any, information was disclosed to the patient.
6. **EMERGENCY TREATMENT**
- When a delay in treatment would jeopardize the life or health of the patient and the patient is unable to give an informed consent, the law recognizes an exception to the requirement for obtaining an informed consent.
- a. **Attempt to Obtain Consent.** If at all possible, an attempt to obtain consent for the medical or surgical treatment should be made. If written consent from the patient or his/her legal representative is impossible, verbal consent or consent by telephone in emergency situations may be utilized.
  - b. **Certification of Emergency.** Before emergency treatment is provided without obtaining consent, the attending L.I.P. shall determine that the treatment appears to be immediately required and necessary to prevent deterioration or aggravation of the patient's condition. This determination shall be charted by the L.I.P.
  - c. **Treat Only the Emergency.** In proceeding without consent, only the required and necessary emergency medical care shall be performed. Unnecessary incidental treatment should be delayed until an attempt to obtain consent from the patient or his/her legal representative is made.
  - d. **Knowledge of Facts Negating Consent.** The emergency care shall not be provided if the L.I.P. has knowledge of facts negating consent, e.g. an expression of religious beliefs or a valid Advanced Directive or Living Will.
  - e. **When in Doubt.** When in doubt as to whether the consent is available or valid or the procedure necessary to save a life, err on the side of saving a life.
  - f. **Consent for Procedure Form.** If the LIP has determined that an emergency treatment is warranted, the "Emergency Consent Exception" box can be checked on the Consent for Procedure form in lieu of obtaining signed consent.

## 7. REFUSAL TO ACCEPT TREATMENT OR TO SIGN A CONSENT FORM

- a. If a patient or his/her legal representative refuses procedures advised by the attending L.I.P. or refuses to sign the consent form.
  - i. Attempt to resolve the patient's issues/concerns. Notify their L.I.P. who may be able to address the patient's concerns.
  - ii. Follow the steps outlined in the policy [Against Medical Advice](#) and document the refusal on the Refusal of Examination, Advised Medical Care, or Transfer form.
  - iii. The progress note should include a description of the nature of the refusal, the fact that the patient was informed of the possible consequences of a refusal and the fact that the patient or his/her representative persisted in the refusal.

## 8. DURATION OF CONSENT

- a. **A Consent to a Medical Treatment or Procedure** is valid until the patient revokes the consent (verbally or in writing) or until the patient is discharged from the hospital, unless the consent form expressly states otherwise. A new consent is necessary:
  - i. if a change in a patient's condition requires a new procedure or
  - ii. if the risks or benefits of the procedure materially change as a result of the change in condition or
  - iii. the patient has a second, identical procedure during the same stay.
- b. **Consent for Blood Transfusion** is valid for only 30 days, or one admission, whichever comes first. Repeat transfusions are covered under the same Consent for Blood Transfusion if the transfusions are within a single admission or within 30 days.
- c. **Consent for Service** is valid until revoked, until a minor becomes emancipated or reaches the age of majority, or there is a change in the surrogate decision maker is identified requiring a new consent for service be obtained. This does not preclude a new consent for service being obtained at any time.

## 9. Obtaining consent on an unidentified individual needing non-emergent treatment.

**This process is to be used if a patient presents for treatment using an assumed or false name and we are unable to establish the true identity of the individual:**

- a. Two witnesses along with L.I.P.(s) involved in the procedure should be present during consent discussions and both witnesses should sign the Consent for Treatment form and any Informed Consent documentation that the L.I.P. may have.
- b. Get a photo of the person who signs the consent form (the "No Identity Patient"), the L.I.P., and witnesses. Security or Patient Safety can help with the photos. Place photos in the chart and make these part of the permanent record.
- c. Document in the medical record that we have no ID to prove patient is who s/he claims to be.
- d. Add a dictated or handwritten addendum to consent document(s) stating something like "Patient presented under this name, with this diagnosis; appearance was \_\_\_\_\_. We think there is an identity issue and have shared this with the patient,

but above patient states s/he is above patient and gives full consent for this procedure in the presence of these witnesses."

e. **Elective procedures:**

- i. If procedure is elective, it may be held pending an attempt to obtain appropriate identification. Clinical staff should work with the Administrative Supervisor/Patient Safety staff to try to get identification before proceeding to next steps. Security can assist with ID process as necessary.
- ii. Patient safety issues to consider: are the diagnostic tests and history and physical for the presenting patient or from another individual? Do we have correct allergy information?
- iii. Do the benefits of proceeding with the elective procedure outweigh the risks associated with doing an elective procedure on an individual?
- iv. L.I.P. will make the decision as to whether or not the procedure will move forward and may choose to work with his/her personal risk manager in making the decision.

## Appendix A: Who may give an informed consent?

### 1. **Adult Competent Patient**

An adult competent patient must sign his/her own consent/refusal to consent documentation. ***If an adult competent patient is able to provide consent, no one else may provide substituted consent***; except a court of competent jurisdiction. ([RCW 26.28.010 Age of majority](#), [RCW 26.28.015](#)).

- a. **Definition of Adult.** An adult is a person who is 18 year or older, or who has legally married (regardless of a subsequent divorce or annulment).
- b. **Competency.** A patient may be considered to be mentally competent until such time as evidence to the contrary becomes obvious or known. A person lacks legal capacity to provide informed consent if they are unable, for any reason, to appreciate the information provided by the L.I.P. as to the decision on treatment, or to exercise his/her judgment. The patient must be of sound mind and not under duress. The consent should first be read by or read to the patient. The patient should know what is being signed. If in the judgment of the attending L.I.P., the patient is not considered to be of sound mind or mentally competent, as after a head injury, or when under the influence of drugs or alcohol, or when sedated, treatment must be deferred or consent from an authorized representative must be obtained, unless there is an emergency. (See [RCW 11.88.010](#) for a discussion of legal incompetence).
- c. **Incompetency.** A patient may have been declared incompetent by a court, in which case a guardian will normally have been appointed to make a decision on behalf of the competent patient. In cases where the patient has not been declared as incompetent by a court, the attending L.I.P. should determine whether the patient is incompetent at the time the consent is sought to be obtained. The fact that the patient has made a medically irrational choice, or a choice with which most people

would disagree, does not in and of itself warrant the conclusion that the patient is incompetent. A patient may also be incompetent at one point in time and not at another. Medication of a patient or severe pain may, but does not necessarily, cause a patient to become temporarily incompetent. The question is whether the pain or medication substantially interfere with the patient's ability to understand the information being provided or exercise responsive judgment.

- d. **Persons Authorized to Provide Informed Consent to Health Care on Behalf of Adult Incompetent Patient.** Persons authorized to provide informed consent to health care on behalf of an adult patient who is incompetent to consent shall be a member of the following classes of persons in the following order of priority per [RCW 7.70.065](#): *(note: if there are two or more individuals in the same class/category, there must be unanimous agreement on the decision among all available members of that class/category).* See Posters: Medical Capacity Defined at the end of this document for explanatory graphics.
- i. The appointed guardian of the patient, if any;
  - ii. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
  - iii. The patient's spouse or state registered domestic partner;
  - iv. Children of the patient who are at least 18 years of age;
  - v. Parents of the patient; and
  - vi. Adult brothers and sisters of the patient.
  - vii. Adult grandchildren of the patient who are familiar with the patient
  - viii. Adult nieces and nephews of the patient who are familiar with the patient
  - ix. Adult aunts and uncles of the patient who are familiar with the patient; and
  - x. Under certain circumstances, an adult who is a close friend of the patient, who has exhibited special care or concern for the patient, if the following requirements are met:
    - i. Must be willing and able to become involved in the patient's health care,
    - ii. has maintained such regular contact with the patient as to be familiar with the patient's activities, health, personal values, and moral,
    - iii. is not aware of a person in a higher priority class willing and able to provide informed consent to health care on behalf of the patient, and
    - iv. has signed a declaration, which is effective for up to 6 months from the date of the declaration, signed and dated under penalty of perjury pursuant to RCW 9A.72.085, that recites facts and circumstances demonstrating that he or she is familiar with the patient and meets the above requirements. *(note: a health care provider may, but is not required to, rely on a declaration provided under this subsection. The health care provider or facility is*

*immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration provided in compliance with this subsection - RCW 7.70.065, effective July 28, 2019)*

- e.
- f. **Who may not provide informed consent:** The following are prohibited from providing consent:
  - a. A physician to the patient or an employee of the physician, the owner, administrator, or employee of a health care facility, nursing home, or long-term care facility where the patient resides or receives care, or a person who receives compensation to provide care to the patient.
  - g. **Persons in custody of the Law.** A person in custody of a law enforcement agency must still give consent for medical treatment; except in the case of alcohol or drug blood tests. Under certain circumstances consent is implied (Drivers Implied Consent Law [RCW 46.20.308](#)). See *Blood Alcohol Tests* in Appendix B for more details. If the person is unable to consent due to incompetence, the surrogate decision makers are the same as outlined in the prior section.

## 2. **Minors – General Rules to Consent (see exceptions in Section 3 below)**

- a. An excellent one page summary of the primary areas related to minor consent is provided in the reference "Providing Health Care to Minors under Washington Law".
- b. **Definition of a minor:** A minor is any person under the age of 18 who is not or has not been legally married.
- c. *Informed consent discussions with minors should be conducted at a level that can be understood by the minor.*
- d. **Questions?** Any questions about whether a minor can consent to his/her own treatment shall be directed to the Patient Safety Department.
- e. **Persons authorized to provide informed consent to health care on behalf of a minor in the following order of priority per [RCW 7.70.065](#):**
  - i. The **appointed guardian**, or legal custodian authorized pursuant to Title [26](#) RCW, of the minor patient, if any;
  - ii. A **person authorized by the court** to consent to medical care for a child in out-of-home placement pursuant to chapter [13.32A](#) or [13.34](#) RCW, if any;
  - iii. **Parents** of the minor patient;
  - iv. The **individual, if any, to whom the minor's parent has given a signed authorization** to make health care decisions for the minor patient; and a **competent adult representing himself or herself to be a relative** responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to RCW [9A.72.085](#) stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

PSMMC as the healthcare provider may, but is not required to, rely upon the representations or declaration of a person claiming to be responsible for the care of the minor child.

**3. Exceptions to the general rules regarding consent to minors are noted below.**

- 1. The reference "Providing Health Care to Minors under Washington Law" discusses special consent situations related to:**
  - i. Emergency Medical Services
  - ii. Non-emergency medical services under the Mature Minor Doctrine.
  - iii. Immunizations
  - iv. Sexually Transmitted Disease Testing
  - v. Birth Control Services
  - vi. Prenatal Care services
  - vii. Outpatient and inpatient mental health
  - viii. Outpatient and inpatient substance abuse treatment.
- 2. Emancipated Minors.** If emancipated, a minor may give consent. A minor who obtains a court order declaring emancipation may give consent (RCW [26.28.020](#)). Absent a court order, there is no clear definition of an "emancipated" minor. The L.I.P. obtaining such consent must weigh the facts in making any such determination. Age, maturity, intelligence, training, experience economic independence and freedom from parental control are the factors which the Washington courts have stated must be considered (**Smith v. Seibly**, 72 Wn2d 16). When seeking consent of a minor for medical treatment, the L.I.P. should ask the minor questions to determine his/her capacity to understand the proposed medical treatment and should take careful notes of these questions and the minor's answers in order to document the maturity of the minor.
- 3. Married Minors.** A married minor (even one who has been divorced or whose marriage has been annulled) is considered an adult for purposes of providing informed consent or refusal to treatment. To prove marital status, the patient should furnish a copy of the marriage certificate. If the certificate is not furnished, the consent of the parent or guardian should be obtained if possible. The minor may also fit the exception for "emancipated" minor.
- 4. Minor with Divorced Parents.** The parent having legal custody has the final authority on consent issues, although the consent of either parent is sufficient. If there is a conflict between the parents, the one having legal custody shall make the determination. Regardless of the allocation of decision-making authority in the court order, either parent may make emergency decisions affecting the child's health.
- 5. Non-Abandoned Minor Who's Parents are Unavailable.** This situation usually arises where the minor is away from home or in the care, custody or possession of schools, camp, sitter, etc. The hospital will accept a written consent by the minor's parent or

legal guardian that such person in the care, custody or possession of the minor patient, can give consent. Also, note that consent may be implied in an emergency room.

6. **Minors Deserted or Abandoned by Parents.** It must first be established that the minor has been in fact abandoned or deserted by his/her parents. If so, then the matter should be referred to Patient Safety for an opinion as to who may properly give consent. Also, refer to the policy on reporting child abuse or neglect. Child Protective Services (CPS) should be contacted if there is a reasonable belief of abandonment, neglect or abuse.
7. **Minor Placed for Adoption.** In an agency adoption, when the agency has obtained a relinquishment from the natural parent, then the agency may consent. If a private placement, the hospital should obtain consent from the natural parent and if possible, from the prospective adoptive parents.
8. **Minors Who are Patients/Children of Minors.** A minor parent has the same right as any other parent to provide consent on behalf of his/her minor child, provided the minor is not so young or immature as to be incapable of giving informed consent.
9. **Minors in Government/Foster Care.** For children in the custody of foster parents or other placement pursuant to state action or court order, DSHS or the supervising governmental entity shall provide consent to non-emergency procedures.
10. **Minors on Active Duty with United States Armed Forces.** A minor who is serving on active duty with any branch of the United States Armed Forces may consent for hospital, medical or surgical care without having to obtain parental or guardian consent.

#### 4. **Surrogate Decision Makers**

- a. **Duty of Surrogate Decision-Maker.** Before any person authorized to provide informed consent on behalf of an incompetent patient exercises that authority, the person must first determine in good faith that the incompetent patient would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interest.
- b. **Priority of Surrogate Decision-Makers.** If the L.I.P. or other person seeking informed consent for proposed health care of the patient makes reasonable efforts to locate and secure authorizations from a surrogate decision-maker in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care if:
  - i. A person of higher priority under this section has refused to give such authorization or;
  - ii. There are two or more individuals in the same class and the decision is not unanimous among all available members of that class.
- c. **Proof of Guardianship.** Proof that a person is the appointed guardian of the patient shall be through provision of Letters of Guardianship issued by a court. If the Letters of Guardianship say that the guardian is a limited guardian, a true copy of the Order

appointing the guardian should be examined to determine the limitations on the guardian's authority, to insure that the guardian has authority to make decisions "for the person" of the incompetent as well as for his/her financial estate. For Letters of Guardianship issued more than six (6) months prior to presentation, the health care provider may want to require proof of continued authority by requiring a current copy certified by the issuing Court.

- d. **Power of Attorney.** The power of attorney document must be examined carefully to insure that it is a "durable" power of attorney which states that it survives the incompetency of the patient, and also that it expressly grants authority to the attorney in fact to make health care decisions. Unless he/she is the spouse, adult child, parent or brother or sister of the principal, none of the following persons may act as the attorney in fact for the principal: any of the principal's L.I.P.'s, the L.I.P.'s employees or the owners, administrators or employees of the health care facility where the principal resides or receives care.
- e. **Limitations on Authority of Guardian/Attorney in Fact to Provide Surrogate Consent.** Both guardians and attorneys in fact under a power of attorney may **not** consent to the following health care procedures without prior court order:
  - i. Therapy or other procedure which induces convulsion.
  - ii. Surgery solely for purposes of psychosurgery;
  - iii. Amputation (may include certain surgeries to entirely remove diseased organs);
  - iv. Other psychiatric or mental procedures which are intrusive on the person's body integrity, physical freedom of movement, or the patient's "bill of rights" (see [RCW 71.05.360](#)) or;
  - v. Involuntarily commitment for mental health treatment, observation or evaluation, unless the procedures for involuntary commitment are followed.
- f. **Guardian Ad Litem; Pending Guardianship Proceeding:** A guardianship is initiated by some interested person filing a petition in the Superior Court of the State of Washington. Upon filing the petition, a guardian ad litem is appointed on the determination of whether the person is incompetent and who the guardian should be. Guardian ad litem do not have the broad authority of a guardian. A guardian ad litem may not consent to discretionary or non-essential health care treatment; the court appointed guardian ad litem only has the authority to provide consent to emergency lifesaving medical services on behalf of the alleged incompetent or disabled person.
- g. **Standby Guardian.** A standby guardian is a person appointed by a regularly appointed guardian, to serve as guardian in the event of incapacity or unavailability of the court appointed guardian. The standby guardian shall have the authority to provide timely, informed consent to necessary medical procedures if the regular guardian cannot be located within four (4) hours after the need for such consent arises. The name, address and telephone number of the standby guardian should be in the court file for the guardianship proceeding.

- h. **Unusual or doubtful situations?** Contact the Patient Safety Department for assistance in determining who may sign, or if a court order is necessary to permit the procedure to be performed. For an emergency, consent is implied.

## Appendix B - Special Informed Consent Requirements

Various laws or regulations and certain circumstances impose special informed consent requirements.

1. **Blood Alcohol Tests:** The law implies consent by a patient to a blood alcohol test if certain conditions exist:
  - a. the patient was involved in an accident in which another person was injured;
  - b. there is a reasonable likelihood that the injured person may die as a result of his/her injuries and;
  - c. the patient is under arrest for the crime of driving under the influence of intoxicating liquor or drugs ([RCW 46.61.502](#)).
  - d. The hospital policy is to make a reasonable attempt to honor requests for blood alcohol specimens and tests for law enforcement agencies, provided the requesting law enforcement officer reads and signs the appropriate certification of foregoing circumstances. The hospital will agree to draw blood if undue restraint is not required. Where physical restraint is required, law enforcement agencies will have to provide restraint and, if deemed appropriate by the emergency room L.I.P., provide qualified professional personnel to withdraw blood for examination.
2. **HIV Testing:** The patient's informed consent for HIV testing is required, along with pre-and post-test counseling. In cases of occupational exposure to blood borne pathogens, both the exposed worker and the source patient must give consent for HIV testing of their blood. [WAC 246-100-207](#) allows the provider/lab to obtain either written or verbal informed consent prior to performing an HIV test. At PSMHC a patient may give consent before undergoing a procedure and the consent is documented in Section 1 of the Procedural Consent Form.
3. **Photography:** The likeness of a patient may be recorded through a number of visual means, including still photography, videotaping, digital imaging, scans, and others. The term "patient photography" will be used for any such recording of a patient's likeness.
  - a. Consent for patient photography used in the diagnosis or treatment of the patient is obtained via the standard conditions of admission form patients sign when admitted, as well as in the *Consent for Operation or Invasive Procedure* form.
  - b. Additional written authorization should be obtained before recording or filming any patient for purposes other than the identification, diagnosis, or treatment of that patient (such as medical education, staff teaching, or publicity purposes). The patient or his/her legal representative should sign and date the form "Patient Authorization for Marketing and Communications".
4. **Research Subjects:** All research, development, and related activities that involve human subjects, including informed consent requirements, must be reviewed and approved by the Institutional Review Board (IRB) prior to initiation of the activity. Specific written consent is

required for each drug or device. In addition, drug manufacturers may provide specific consent forms. The particular consent form for each procedure, drug or device subject to these regulations and guidelines must be approved by the IRB.

The investigator, or sub-investigator designated by the investigator (as defined on Form 1572) must obtain the informed consent. Informed consent must be obtained before non-routine screening procedures are performed and/or before any change in the subject's current medical therapy is made for the purpose of the clinical trial, whichever comes first. The patient should have ample opportunity to ask questions and to decide whether or not to participate in the clinical trial. The patient should not be coerced to participate or continue in a trial. The patient (or legal representative) and the individual obtaining consent must personally sign, date and time the informed consent document which has been approved by WIRB. The patient or legal representative should receive a copy of the signed informed consent document and any subsequent amendments. In situations where the patient can only be enrolled with the consent of a legal representative, the patient should still be informed of the clinical trial compatible with their level of understanding. In addition to the legal representative, the patient should (if capable) sign, date and time the informed consent document following the explanation of the trial.

5. **Pelvic exams:**

A health care provider licensed may not knowingly perform or authorize a student practicing under their authority to perform a pelvic examination on a patient who is anesthetized or unconscious unless:

- (a) The patient or a person authorized to make health care decisions for the patient gave specific informed consent to the examination;
- (b) The examination is necessary for diagnostic or treatment purposes; or
- (c) Sexual assault is suspected, evidence may be collected if the patient is not capable of informed consent due to longer term medical condition, or if evidence will be lost (reference WA ESB 5282, June 11, 2020).

1. **Autopsies:**

1. **Consent for autopsy.** Consents are to be obtained after expiration of adult or child. Autopsy may be requested by attending L.I.P., family, or ME. Autopsy permit is not required on ME's cases.
2. The right to request or refuse an autopsy([RCW 68.50.101](#)) may be exercised by the following persons in the order of priority set out;
  1. the surviving spouse or state registered domestic partner;
  2. any child of the deceased individual who is 18 years of age or older;
  3. one of the parents of the decedent;
  4. legal-aged sibling;
  5. A person who was guardian of the decedent at the time of death
  6. Any other person or agency authorized or under an obligation to dispose of the remains of the decedent.
  7. Telegram is acceptable and/or phone authorization by two witnesses may

be obtained.

2. **Disposition of Remains:**

- a. See revised code below

**RCW 68.64.080**

**Persons authorized to make an anatomical gift – After donor's death.**

## **Appendix C - List of Invasive Procedures**

**Invasive Procedures are defined per Medical Staff Bylaws. The following is not an exhaustive list. It is intended to clarify some procedures which have been questioned.**

<b>Procedure Name</b>	<b>Requires Informed Consent</b>
<b>Ablations</b>	<b>Yes</b>
<b>Amniocentesis</b>	<b>Yes</b>
<b>Angiogram</b>	<b>Yes</b>
<b>Angiography</b>	<b>Yes</b>
<b>Angioplasties</b>	<b>Yes</b>
<b>Arthrogram</b>	<b>Yes</b>
<b>Arterial Line insertion (performed alone)</b>	<b>Yes</b>
<b>Aspiration Cyst (simple/minor)</b>	<b>No</b>
<b>Aspiration Cyst (complex)</b>	<b>Yes</b>
<b>Blood Administration</b>	<b>Yes</b>
<b>Blood Patch</b>	<b>Yes</b>
<b>Bone Marrow Aspiration</b>	<b>Yes</b>
<b>Bone Marrow Biopsy</b>	<b>Yes</b>
<b>Bronchoscopy</b>	<b>Yes</b>
<b>Capsule Endoscopy</b>	<b>Yes</b>
<b>Catherizations, Cardiac &amp; vascular</b>	<b>Yes</b>
<b>Cardioversion</b>	<b>Yes</b>
<b>Central Line</b>	<b>Yes</b>
<b>Chemotherapy</b>	<b>Yes</b>
<b>Chest Tube Insertion</b>	<b>Yes</b>
<b>Circumcision</b>	<b>Yes</b>
<b>Core Biopsy - (stereotactic or ultrasound guided)</b>	<b>Yes</b>
<b>Dialysis Catheter Insertion</b>	<b>Yes</b>
<b>Discogram</b>	<b>Yes</b>

<b>Endoscopies</b>	<b>Yes</b>
<b>Epidural Catheter for chronic pain mgmt.</b>	<b>Yes</b>
<b>ERCP</b>	<b>Yes</b>
<b>Feeding Tube (nasointestinal)</b>	<b>No</b>
<b>Fine Needle Aspiration</b>	<b>Yes</b>
<b>Fistulogram (Dialysis Shunt Angio)</b>	<b>No</b>
<b>Foley Catheter</b>	<b>No</b>
<b>Galactogram/Ductogram</b>	<b>Yes</b>
<b>HIV Testing</b>	<b>Yes</b>
<b>Procedure Name</b>	<b>Requires Informed Consent</b>
<b>I &amp; D Abscess</b>	<b>Yes</b>
<b>IV Contrast Media</b>	<b>No</b>
<b>IV therapy</b>	<b>No</b>
<b>Joint Injection</b>	<b>Yes</b>
<b>Joint relocation with sedation</b>	<b>Yes</b>
<b>Lumbar Puncture</b>	<b>Yes</b>
<b>Lymphoscintigraphy</b>	<b>No</b>
<b>Myelogram</b>	<b>NO</b>
<b>Needle Localization mammogram</b>	<b>Yes</b>
<b>Non-OR Eye Laser Procedure</b>	<b>Yes</b>
<b>Paracentesis</b>	<b>Yes</b>
<b>Percutaneous aspirations &amp; biopsies</b>	<b>Yes</b>
<b>Pericardial tap</b>	<b>Yes</b>
<b>Perinatal Blood Testing</b>	<b>Yes</b>
<b>PICC Line</b>	<b>Yes</b>
<b>Porta Cath Insertion</b>	<b>Yes</b>
<b>Radiation Therapy</b>	<b>Yes</b>
<b>RF Ablation</b>	<b>Yes</b>
<b>Sedation, deep</b>	<b>Yes</b>
<b>Sedation, procedural/moderate</b>	<b>Yes</b>
<b>Sinogram</b>	<b>Yes</b>
<b>Swan Ganz Line</b>	<b>Yes</b>
<b>Thoracentesis</b>	<b>Yes</b>
<b>TIPS (Transjugular intrahepatic portosystemic shunt)</b>	<b>Yes</b>

TPA administration	Yes but not required when TPA is used to clear a line.
Transesophageal Echocardiograms (performed alone)	Yes
Tube Change (gastrostomy/PEG)	No
Tube Check (such as biliary tubes)	No
Umbilical Artery/Vein Line	Yes
Venipuncture	No
Ventricular tap	Yes
Vertebroplasty	Yes
Voiding Cystourethrogram	Yes
White Cell Study	Yes

### 68.64.080

Persons authorized to make an anatomical gift – After donor's death.

1. Subject to subsections (2) and (3) of this section and unless barred by RCW [68.64.060](#) or [68.64.070](#), an anatomical gift of a decedent's body or part may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:
  - a. An agent of the decedent at the time of death who could have made an anatomical gift under RCW [68.64.030](#)(2) immediately before the decedent's death;
  - b. The spouse, or domestic partner registered as required by state law, of the decedent;
  - c. Adult children of the decedent;
  - d. Parents of the decedent;
  - e. Adult siblings of the decedent;
  - f. Adult grandchildren of the decedent;
  - g. Grandparents of the decedent;
  - h. The persons who were acting as the guardians of the person of the decedent at the time of death; and
  - i. Any other person having the authority under applicable law to dispose of the decedent's body.
2. If there is more than one member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g), or (h) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under RCW [68.64.100](#) knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.
3. A person may not make an anatomical gift if, at the time of the deceased individual's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift.

1. Subject to subsections (2) and (3) of this section and unless barred by RCW [68.64.060](#) or [68.64.070](#), an anatomical gift of a decedent's body or part may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:
  - a. An agent of the decedent at the time of death who could have made an anatomical gift under RCW [68.64.030](#)(2) immediately before the decedent's death;
  - b. The spouse, or domestic partner registered as required by state law, of the decedent;
  - c. Adult children of the decedent;
  - d. Parents of the decedent;
  - e. Adult siblings of the decedent;
  - f. Adult grandchildren of the decedent;
  - g. Grandparents of the decedent;
  - h. The persons who were acting as the guardians of the person of the decedent at the time of death; and
  - i. Any other person having the authority under applicable law to dispose of the decedent's body.
2. If there is more than one member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g), or (h) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under RCW [68.64.100](#) knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.
3. A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift

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## Attachments

[Posters: Medical Capacity Defined](#)

[Providing Healthcare to Minors](#)

## Approval Signatures

Step Description	Approver	Date
	Mary Crawford: Exec Dir Operations	05/2022
	Bruce Dumser: Physician Anesthesia	05/2022
	Louise Dyjur: CNO St Mary Med Ctr	05/2022
	Jennifer Milleson: Dir Quality/ Education Svcs	05/2022

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