

TITLE: CONSENT FOR MEDICAL TREATMENT AND IDENTIFICATION OF A SURROGATE DECISION-MAKER

PURPOSE: To provide guidelines for obtaining and documenting consent for non-emergency medical care and treatment and surgical and diagnostic procedures, including the identification of a surrogate decision-maker, when appropriate.

POLICY STATEMENT:

Harris Health System (Harris Health) recognizes the right of patients to be informed of all non-emergency medical care and treatment and surgical and diagnostic procedures before giving consent. This policy provides guidance on obtaining consent for patients, identifying surrogate decision-makers for adult patients, initiating guardianship proceedings, and resolution of conflicts and controversies.

This policy outlines consent for medical treatment and identification of a surrogate decision-maker to consent to treatment. A surrogate decision-maker may not consent to the withdrawal of life-sustaining treatment. Refer to Harris Health Policy 7.07 End of Life Care Decisions and Harris Health Policy 4128 Advance Directives for guidance regarding withholding medical treatment.

POLICY ELABORATIONS:

I. DEFINITIONS:

- A. **ADULT:** A person eighteen (18) years of age or older or a person under eighteen (18) years of age who has had the disabilities of minority removed.
- B. **ADVANCE DIRECTIVE:** An appropriately witnessed document or statement that expresses a patient's wishes with regard to care when he or she is no longer able to communicate with care providers. The Texas Advance Directives Act recognizes the following three distinct types of Advance Directives:
 - 1. **MEDICAL POWER OF ATTORNEY:** A document that designates an adult as an agent to make health care decisions for a patient in the event the patient is physically or mentally unable to communicate. In general, subject to limitations contained in the document and the statute, the agent is authorized to make any health care decision on the patient's behalf that

the patient could have made, if competent. An agent under a Medical Power of Attorney may not consent to:

- a. Voluntary inpatient mental health services;
- b. Convulsive treatment;
- c. Psychosurgery;
- d. Abortion; or
- e. Neglect of the patient through omission of care primarily intended to provide for the comfort of the patient.

2. **DIRECTIVE TO PHYSICIANS (DIRECTIVE):** An instruction to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.

3. **OUT-OF-HOSPITAL DO NOT RESUSCITATE (DNR) ORDER:** A document in the form specified by the State, prepared, and signed by the attending physician of a patient that documents the instructions of the patient or the patient's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

- a. Cardiopulmonary resuscitation;
- b. Advanced airway management;
- c. Artificial ventilation;
- d. Defibrillation;
- e. Transcutaneous cardiac pacing; and
- f. Other life-sustaining treatment specified by the State.

This does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care, to alleviate pain, or to provide water or nutrition.

- C. **ADVANCED PRACTICE PROFESSIONAL (APP):** An individual who holds a state license in their profession as well as other educational credentials attesting to training and qualifications to provide services in one or more of the following categories: Physician Assistant (PA), Certified Registered Nurse Anesthetist (CRNA), Nurse Practitioner (NP) or Clinical Nurse Specialist (CNS), Optometrist (OD), Certified Nurse Midwife (CNM), Clinical Psychologist,

Registered Dietician, and Clinical Pharmacist.

- D. **ATTENDING PHYSICIAN:** The physician with primary responsibility for a patient's treatment and care. This definition applies to this policy only.
- E. **DECISION-MAKING CAPACITY:** The ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.
- F. **HEALTHCARE PROVIDER:** Any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including (1) a registered nurse; (2) a dentist; (3) a podiatrist; (4) a pharmacist; (5) a chiropractor; (6) an optometrist; (7) a health care institution; or (8) a certified health care collaborative. The term includes (i) an officer, director, shareholder, member, partner, manager, owner, or affiliate of Harris Health or physician; and (ii) an employee, independent contractor, or agent of Harris Health or physician acting in the course and scope of the employment or contractual relationship.
- G. **INCAPACITATED OR INCOMPETENT:** Lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.
- H. **INFORMED CONSENT:** Permission given by a patient or patient's legally authorized representative to perform a medical treatment or surgical procedure after the patient has been advised of the risks or hazards that could influence a reasonable person in deciding whether or not to give permission. In order for the patient to make an informed decision about whether to give his or her permission, the patient needs information about the treatment or procedure, the Practitioner(s) or Healthcare Provider(s) who will actually provide the treatment or perform the procedure, and the risks and hazards associated with it that could influence a reasonable person to make a decision to give or withhold consent.
- I. **LEGALLY AUTHORIZED REPRESENTATIVE (LAR):** An individual with legal standing to represent the interests of another (*e.g.*, parent or spouse) or with the authority to act on behalf of another (as by power of attorney, court order, advance directive, or the executor of a will). For purposes of this policy, this

definition includes a Surrogate Decision-Maker.

- J. **MEDICAL TREATMENT:** A health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.
- K. **MINOR OR CHILD:** A person under eighteen (18) years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.
- L. **PRACTITIONER:** Unless otherwise expressly limited, any physician, podiatrist, or dentist holding a current license to practice in the State of Texas.
- M. **SURROGATE DECISION-MAKER:** An individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

II. CONSENT FOR ADULT PATIENTS:

A. Emergency Medical Care:

- 1. Consent for emergency care of a patient is not required if the patient is unconscious or unable to communicate and in medical judgment, there appears to be a life-threatening injury or illness and it is impossible to obtain immediate consent from either the patient or a Surrogate Decision-Maker.
- 2. If the Healthcare Provider fails to obtain Informed Consent because he or she deems the situation an emergency, the Healthcare Provider treating the patient shall document in the patient's medical record the reason(s) the situation constitutes an emergency.

B. Non-Emergency Medical Care:

- 1. An Adult patient may consent to his or her own medical treatment or surgical procedure unless:
 - a. The patient has specifically designated another person to make medical decisions on behalf of the patient pursuant to a properly

executed, current, and valid Medical Power of Attorney See Harris Health Policy and Procedure 4128 Advance Directives);

- b. The patient has a court-appointed guardian; or
- c. The patient is comatose, incapacitated, or otherwise mentally incompetent or physically incapable of communication.

2. Surrogate Decision-Makers:

(For Adult patients who have no Medical Power of Attorney and no Court-Appointed Guardian)

- a. If an Adult patient is comatose, Incapacitated, or otherwise mentally or physically incapable of communication, an Adult surrogate from the following list, in order of priority, who has Decision-Making Capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:
 - i. The patient's spouse;
 - ii. An adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;
 - iii. A majority of the patient's reasonably available adult children;
 - iv. The patient's parents; or
 - v. The individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy. For purposes of this policy, clergy shall mean an individual employed by Harris Health in such capacity or the patient's own clergy.

*NOTE: Members of the clergy employed by Harris Health may consent to medical treatment on behalf of a Harris Health patient **ONLY IF:**

- 1) No other Surrogate Decision-Maker from the list above is available after all attempts to locate and contact such Surrogate Decision-Makers have been exhausted; or
 - 2) The clergy member believes, based on departmental guidelines, that consenting to the proposed treatment or procedure is in the best interest of the patient.
- b. A Surrogate Decision-Maker may NOT consent to:
- i. Voluntary inpatient mental health services;
 - ii. Electro-convulsive treatment;
 - iii. The appointment of another Surrogate Decision-Maker; or
 - iv. Withholding or withdrawing life-sustaining treatment.
- c. If the patient is an adult inmate of a county or municipal jail, a Surrogate Decision-Maker also may NOT consent to:
- i. Psychotropic medication;
 - ii. Involuntary inpatient mental health services; or
 - iii. Psychiatric services calculated to restore competency to stand trial.
- d. Exceptions:
- Section II.B does not apply to:
- i. A decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients;
 - ii. A health care decision made under a Medical Power of Attorney executed by the Adult patient;
 - iii. Consent to medical treatment of minors;
 - iv. Consent for emergency care;
 - v. Hospital patient transfers; or
 - vi. An Adult patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.
- e. The healthcare team must make a reasonably diligent effort to

contact the persons eligible to serve as Surrogate Decision-Makers in the order of priority:

- i. Nursing and clinical case management shall assist the Attending Physician in contacting eligible Surrogate Decision-Makers; and
- ii. Efforts to contact eligible Surrogate Decision-Makers shall be documented in detail in the patient's medical record.

- f. If a Surrogate Decision-Maker consents to medical treatment on behalf of the patient, the Attending Physician shall record the date and time of the consent and sign the patient's medical record. The Surrogate Decision-Maker shall countersign the patient's medical record or execute an informed consent form;
- g. A Surrogate Decision-Maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the individual receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the Surrogate Decision-Maker as soon as possible.

C. Documentation of Patient's Comatose State, Incapacity, or Inability to Communicate:

1. The Attending Physician shall document the patient's comatose state, incapacity, or other mental or physical inability to communicate and the proposed medical treatment in the patient's medical record;
2. If the primary cause of the patient's incapacity is a physical condition (*e.g.*, head injury, stroke, etc.), the Attending Physician must document such findings; and
3. If the primary cause of the patient's incapacity is unknown or believed to be psychiatric (*e.g.*, psychosis, dementia, etc.), the Attending Physician may request and obtain a psychiatric evaluation. The clinical diagnosis and results of the psychiatric evaluation shall be documented in the patient's medical record.

D. In the event an Adult patient is comatose, incapacitated, or otherwise mentally or physically incapable of communication and no Surrogate Decision-Maker can

be located or the Surrogate Decision-Maker refuses to consent on behalf of the patient, see Section VI, Guardianship Process, below.

III. CONSENT FOR MINOR PATIENTS:

A. Emergency Medical Care:

1. Consent is not required for a Minor suffering from what reasonably appears to be a life-threatening injury or illness whose parent, managing or possessory conservator, or guardian is NOT present or whose parents are available and refuse consent;
2. If the Healthcare Provider fails to obtain Informed Consent because he or she deems the situation an emergency, the Healthcare Provider treating the patient shall document in the patient's medical record the reason(s) the situation constitutes an emergency.

B. Non-Emergency Medical Care:

1. Consent to Medical, Dental, Psychological, and Surgical Treatment:

- a. The following persons have general authority to consent to medical, dental, psychological, and surgical treatment of a minor:
 - i. The mother or father, a man presumed to be the father, a man legally determined to be the father, a man adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father. This does not include a parent as to whom the parent-child relationship has been terminated; or
 - ii. A court appointed guardian.
- b. The following persons have authority to consent to medical, dental, psychological, and surgical treatment of a minor when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

- i. The minor's grandparent;
 - ii. The minor's adult brother or sister;
 - iii. The minor's adult aunt or uncle;
 - iv. An educational institution in which the minor is enrolled that has received written authorization to consent from a person having the right to consent;
 - v. An adult who has actual care, control, and possession of the minor and has written authorization to consent from a person having the right to consent;
 - vi. A court having jurisdiction over a suit affecting the parent-child relationship of which the minor is subject;
 - vii. An adult responsible for the actual care, control, and possession of a minor under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or
 - viii. A peace officer who has lawfully taken custody of the minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.
- c. The Texas Youth Commission may consent to the medical, dental, psychological, and surgical treatment of a minor committed to the Texas Youth Commission when the person having the right to consent has been contacted and that person has not given actual notice to the contrary;
- d. A Minor may consent to his or her own medical, dental, psychological, and surgical treatment if the minor:
- i. Is emancipated (minor must provide copy of signed court order);
 - ii. Is on active duty with the armed services of the United States of America;
 - iii. Is sixteen (16) years of age or older and resides separate and apart from his or her parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of the residence; and is managing his or her own financial affairs, regardless of the source of the income;

- iv. Consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported;
- v. Is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy;
- vi. Consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use;
- vii. Is unmarried, is the parent of a child, and has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child; or
- viii. Is serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice, unless the treatment would constitute a prohibited practice.

In the above circumstances, consent of the parents, managing conservator or guardian is not required. The physician, dentist, hospital, or medical facility may rely on the written statement of the Minor containing the grounds on which the Minor has capacity to consent to his or her own medical treatment.

2. Consent to Counseling:

A Minor may consent to his or her own counseling for suicide prevention; chemical addiction or dependency; or sexual, physical or emotional abuse.

- a. A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a child has been sexually, physically or emotionally abused, is contemplating suicide, or is involved in chemical or drug addiction or dependency may:
 - i. Counsel the child without consent of the child's parents, or if applicable, managing conservator, or guardian;

- ii. With or without the consent of the minor, advise the child's parents or, if applicable, managing conservator or guardian; or
 - iii. Rely on the written statement or the minor containing the grounds on which the minor has capacity to consent to his or her treatment.
 - b. Unless consent is obtained as otherwise allowed by law, the physician, psychologist, counselor, or social worker may not counsel a child if consent is prohibited by a court order.
3. Suspected Child Abuse or Neglect:
- A physician, dentist, or psychologist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent to treatment:
- a. An examination may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests; and
 - b. Unless consent is obtained as otherwise allowed by law, a physician, dentist, or psychologist may not examine a child sixteen (16) years of age or older who refuses to consent or for whom consent is prohibited by a court order.
4. Consent to Immunizations:
- a. The following persons have general authority to consent to immunizations of a minor:
 - i. The mother or father, a man presumed to be the father, a man legally determined to be the father, a man adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father. This does not include a parent as to whom the parent-child relationship has been terminated;
 - ii. A guardian of the Minor; and

- iii. A person authorized under the law of another state or a court order to consent for the child.
- b. The following persons have limited authority to consent to the immunization of a Minor if the Minor's parent, managing conservator, guardian, or a person authorized to consent under the law of another state or a court order is not available:
 - i. The Minor's grandparent;
 - ii. The Minor's adult brother or sister;
 - ii. The Minor's aunt or uncle; or
 - iii. The Minor's stepparent.
 - iv. An educational institution in which the Minor is enrolled that has written authorization to consent for the Minor from a parent, managing conservator, guardian, or other person

Who under the law of another state or a court order may consent for the Minor;
 - v. Another adult who has care, control, and possession of the Minor and has written authorization to consent for the Minor from a parent, managing conservator, guardian, or other person who under the law of another state or a court order, may consent for the Minor;
 - vi. A court having jurisdiction of a suit affecting the parent-child relationship of which the Minor is subject;
 - vii. An adult having actual care, control, and possession of the Minor under an order of a juvenile court or by commitment by a juvenile court to the care of an agency of the state or county; or
 - viii. An adult having actual care, control, and possession of the Minor as the Minor's primary caregiver.

The above persons may not consent for the Minor if the person has actual knowledge that a parent, managing conservator, guardian of the Minor. or other person who under the law of another state or a court order may consent for the Minor has expressly refused to give consent, withheld

or withdrawn an authorization to consent to the immunization; has been told not to consent for the Minor; or has withdrawn a prior written authorization for the person to consent.

- c. The Texas Youth Commission may consent to the immunization of a Minor committed to it if a parent, managing conservator, or guardian of the Minor or other person who, under the law of another state or court order, may consent for the Minor has been contacted and refuses to consent and does not expressly deny to the Texas Youth Commission the authority to consent for the Minor;
- d. A person who consents to a Minor's immunization must provide the health care provider with sufficient and accurate health history and other information about the Minor for whom the consent is given and, if necessary, sufficient and accurate health history and information about the Minor's family to enable the person who may consent to the Minor's immunization and the health care provider to determine adequately the risks and benefits inherent in the proposed immunization and to determine whether immunization is advisable;
- e. The person authorized to consent is not required to be present when the immunization of the Minor is requested if an appropriate consent form has been obtained by the Healthcare Provider.

5. Authorization and Consent:

Consent shall be obtained upon registration using Harris Health System form 280331 (or 280331S shaded version) General Consent for Medical Treatment in the Consents, Agreements, Authorizations, Acknowledgements and Irrevocable Assignments for all minor patients who present to a Harris Health facility for medical care and treatment and immunizations. Consent shall also be obtained for List A procedures for the minor patient using Harris Health System form 280331 (or 280331S shaded version) Disclosure and Consent for Medical and Surgical Procedures or Harris Health System form 282576, Disclosure and Consent for Dental and Surgical Procedures (Spanish).

III. DISCLOSURE OF RISKS AND HAZARDS:

- A. The Healthcare Provider shall obtain Informed Consent only after disclosing to the patient or the patient's LAR the risks and hazards involved in the medical care or surgical or diagnostic procedure including, as appropriate, alternative treatments.
- B. All medical treatments and surgical or diagnostic procedures appearing on Texas Medical Disclosure Panel List A shall require full disclosure by the Healthcare Provider to the patient or the patient's LAR. Healthcare Providers shall use Harris Health form 280331 (or 280331S shaded version) Disclosure and Consent for Medical and Surgical Procedures (English), or Harris Health form 282576 Disclosure and Consent for Dental and Surgical Procedures (Spanish) for List A treatments and procedures.
- C. The Healthcare Provider who renders the medical care or performs the surgical or diagnostic procedure shall disclose to the patient or the patient's LAR, the risks and hazards related to the medical care or surgical or diagnostic procedure including, but not limited to, those procedures that appear on the Texas Medical Disclosure Panel's List A, prior to obtaining written Informed Consent.
- D. Medical treatments and surgical and diagnostic procedures appearing on Texas Medical Disclosure Panel List B DO NOT require disclosure by the Healthcare Provider to the patient or the patient's LAR.
 - 1. Disclosure of the risks and hazards related to medical care and surgical and diagnostic procedures appearing on Texas Medical Disclosure Panel List B shall be at the discretion of the Healthcare Provider; Healthcare Providers shall use Harris Health System Form 280331 (or 280331S shaded version), Disclosure and Consent for Medical and Surgical Procedures, for non-List A procedures.
- E. If a medical treatment or surgical or diagnostic procedure to be performed does not appear on List A or List B, the Healthcare Provider must disclose the risks and hazards that could influence a reasonable person in making a decision to give or withhold consent.

IV. OBTAINING AND DOCUMENTING CONSENT:**A. General Consent:**

General consent for non-emergency medical care and treatment shall be obtained for ALL patients who present to a Harris Health facility using Harris Health form 280331 (or 280331S shaded version) General Consent for Medical Treatment in the Consents, Agreements, Authorizations, Acknowledgements and Irrevocable Assignments.

B. Informed Consent:

1. Informed Consent for non-emergency medical, dental, and surgical procedures shall be obtained for ALL patients using Harris Health form 280331 (or 280331S shaded version) Disclosure and Consent for Medical and Surgical Procedures (English) or Harris Health form 282576 Disclosure and Consent for Dental and Surgical Procedures (Spanish).
2. The Healthcare Provider who renders the medical care or surgical or diagnostic procedure shall be responsible for the completeness of the Informed Consent form;
3. The patient's medical record shall contain a properly executed Informed Consent form (Harris Health System form 280331 (or 280331S shaded version), Disclosure and Consent for Medical and Surgical Procedures or Harris Health System form 282576, Disclosure and Consent for Dental and Surgical Procedures (Spanish)) prior to conducting any procedure or other type of treatment that requires Informed Consent, except in emergencies:
 - a. The form shall be signed and dated by the patient or the patient's LAR, a competent witness, and the Healthcare Provider administering the treatment or performing the procedure; and
 - b. Completed and signed Informed Consent forms shall be scanned into the patient's medical record.
4. The Informed Consent form shall contain the name of the responsible Healthcare Provider(s) who is performing the procedure or administering the medical treatment:

- a. If the Healthcare Provider identified on Harris Health form 280331 (or 280331S shaded version) Disclosure and Consent for Medical and Surgical Procedures (English) or Harris Health System form 282576 Disclosure and Consent for Dental and Surgical Procedures (Spanish) changes prior to the treatment or procedure, the new Healthcare Provider shall line through the name listed on the form, enter the name of the new Healthcare Provider and have the patient or the patient's LAR initial the change;
 - b. If more than one change must be made to the Harris Health System Form Disclosure and Consent for Medical and Surgical Procedures form, a new form shall be completed and signed;
 - c. An APP may obtain Informed Consent if the procedure or surgery requiring Informed Consent is within the scope of practice and clinical privileges of the APP.
5. The witness shall sign Harris Health form 280331 (or 280331S shaded version) Disclosure and Consent for Medical and Surgical Procedures (English) or Harris Health form 282576 Disclosure and Consent for Dental and Surgical Procedures (Spanish).

*NOTE: The competent witness of the Informed Consent may not be the Healthcare Provider(s) who is directly providing the medical care or performing the surgical or diagnostic procedure.
6. Obtaining New Informed Consent Form:
 - a. A new Disclosure and Consent for Medical and Surgical Procedures (English) (Harris Health form 280331 (or 280331S shaded version) or Disclosure and Consent for Dental and Surgical Procedures (Spanish) (Harris Health form 282576) shall be obtained in the event the patient has a change to alter the admitted plan of treatment or surgical intervention such that a new or different course of treatment or surgical intervention is required.
 - b. If a patient's medical condition changes after an Informed Consent form for a specific medical or surgical procedure has been signed and the change in the patient's medical status resulted in increased risk or additional risk associated with the planned procedure or treatment, a new Informed Consent form shall be completed and

signed before the specific medical or surgical procedure may be performed unless the treatment or care is being provided emergently.

- c. Post-operative patients requiring a procedure or treatment for a diagnosis not directly related to the surgical procedure shall have a new Informed Consent form signed with the new diagnosis documented.

C. Repetitive Treatments:

1. When a patient undergoes repetitive treatment for a List A procedure, an Informed Consent form shall be completed and signed each time a treatment is administered or a procedure is performed. Note: Effective May 9, 2017 an exception to this requirement has been granted for patients who present to a Harris Health Emergency Center with existing vascular access and are in need of hemodialysis. For these patients, an Informed Consent form for hemodialysis must have been completed within the previous 365 days of the date of hemodialysis. If there is a change in (1) the risks, benefits, and alternatives to the treatment or procedure; (2) the mode of treatment or procedure; or (3) the patient's capacity to consent; a new consent for hemodialysis must be completed.
2. When a patient undergoes repetitive treatment for a non-List A procedure (*e.g.*, chemotherapy or radiation), it is not necessary to complete a new consent form for each treatment subsequent to the initial consent form:
 - a. Subsequent treatment sessions should be preceded by a series of screening questions to make certain that neither the underlying context for care nor the probable benefits and risks have changed.
 - b. When there is a change in the treatment plan or there are newly recognized benefits and risks, the patient should be apprised of this information in order to make informed choices about care.

D. Refusal to Consent:

In the event the patient or the patient's LAR refuses to consent to examination, treatment, or surgical or diagnostic procedures, the Healthcare Provider must take reasonable steps to explain the risks and benefits of examination, treatment, or procedure and the consequences of declining examination and recommended

treatments or procedures and secure the patient or the patient's LAR's written Informed Consent to refuse such examination, treatment, or procedure using Harris Health Form 282632 Refusal of Treatment. The patient shall not be examined or treated unless a consent form has been properly obtain, except in emergencies.

- E. The Informed Consent form shall be effective until the listed procedure(s) has been performed unless the patient's condition has changed such that the risks and/or benefits of the treatment or procedure have changed warranting completion of a new Informed Consent form.

V. INFORMED CONSENT FOR OTHER PROCEDURES:

A. Hysterectomy Procedures:

Harris Health form 281701 Disclosure and Consent Hysterectomy (English) or Harris Health form 281702 Disclosure and Consent Hysterectomy (Spanish) shall be used for hysterectomy procedures, unless the hysterectomy must be performed in an emergent situation.

B. Anesthesia and/or Perioperative Pain Management (Analgesia):

1. If anesthesia or perioperative pain management is being provided in conjunction with another List A procedure, Harris Health form 283343 Disclosure and Consent - Anesthesia/Perioperative Pain (English) or Harris Health form 283348 Disclosure and Consent - Anesthesia/Perioperative Pain (Spanish) shall be used for the anesthesia, and Harris Health form 280331 (or 280331S shaded version) Disclosure and Consent for Medical and Surgical Procedures (English) or Harris Health form 282576 Disclosure and Consent for Dental and Surgical Procedures (Spanish) shall be used for the operative procedure (or Harris Health form 281701 Disclosure and Consent Hysterectomy (English) or Harris Health form 281702 Disclosure and Consent Hysterectomy (Spanish) in the case of a hysterectomy).
2. If the Healthcare Provider is administering anesthesia or analgesia solely for purposes of pain management and the pain management procedure is a List A procedure, the Healthcare Provider shall use Harris Health form 280331 (or 280331S shaded version) Disclosure and Consent for Medical

and Surgical Procedures (English) or Harris Health form 282576 Disclosure and Consent for Dental and Surgical Procedures (Spanish).

C. Electroconvulsive Therapy (ECT):

Harris Health form 283345 Disclosure and Consent - Electroconvulsive Therapy (English) or Harris Health Form 283370, Disclosure and Consent - Electroconvulsive Therapy (Spanish) shall be used for ECT procedures. If anesthesia is used in conjunction with the administration of ECT, Harris Health Form 283343 Disclosure and Consent - Anesthesia/Perioperative Pain (English) or Harris Health form 283348 Disclosure and Consent - Anesthesia/Perioperative Pain (Spanish) shall be used.

VI. GUARDIANSHIP PROCESS:

In the event an Adult patient is comatose, incapacitated, or otherwise mentally or physically incapable of communication and no Surrogate Decision-Maker can be located or the Surrogate Decision-Maker refuses to consent on behalf of the patient, the Attending Physician may, as appropriate, initiate guardianship proceedings by completing and filing a Guardianship Referral Letter and Physician's Certificate of Medical Examination with the County Clerk's Office at 201 Caroline, 8th floor, Houston, Texas 77002.

- A. Clinical Case Management (CCM) shall assist with the guardianship referral process, including contacting the Harris County Probate Court and assisting the Attending Physician with completing and filing the Guardianship Referral Letter and Physician's Certificate of Medical Examination, as necessary (Refer to Attachment A).
- B. CCM shall document progress and shall constantly update the family information. The social worker shall make all efforts to obtain the names and addresses of all known family members in order to notify family members of the guardianship process.
- C. In the event the patient needs medical care or treatment or a surgical or diagnostic procedure and the guardianship proceedings have not concluded, the Attending Physician or clinical staff may request consultation with the pavilion Ethics Advisory Committee.

- D. Prior to being provided information contained in a patient's medical records, the court-appointed Court Investigator, Guardian Ad Litem, Attorney Ad Litem, or Temporary Guardian must present to CCM (or the Nursing Supervisor if after hours) the signed Court Order appointing him or her to act on behalf of the patient. Prior to being granted access to the patient, the court-appointed Guardian must present a current Letter of Guardianship for the patient. CCM shall ensure that this information is documented in the patient's medical record.
- E. The court-appointed Guardian has authority to make treatment decisions on behalf of the patient. If the court appoints a Guardian over the patient, the Guardian's authority to make treatment decisions on behalf of the patient supersedes the authority of a Surrogate Decision-Maker.
- F. If the patient's mental or physical status changes such that a guardianship is no longer necessary, the Attending Physician may provide updated documentation by completing a new Physician's Certificate of Medical Examination. CCM shall file the new Physician's Certificate of Medical Examination with the appropriate Harris County Probate Court and document the patient's medical record accordingly.

VII. OTHER CONSENT POLICIES AND FORMS:

A. Policies:

Certain medical treatments and procedures are governed by service or procedure-specific Harris Health Informed Consent policies. In addition to the policies referenced in this policy, please refer to the following policies for additional detailed guidelines:

1. Harris Health Policy and Procedure 7.26 Consent to Treatment with Psychoactive Medication;
2. Harris Health Policy and Procedure 4217 Informed Consent: Sterilization;
3. Harris Health Policy and Procedure 4210 Autopsy;
4. Harris Health Policy and Procedure 4031 Pregnant Women, Consent for HIV Testing;
5. Harris Health Policy and Procedure 4170 Blood/Blood Component Administration.

B. Forms:

Certain medical treatments and procedures are documented by service or procedure-specific Harris Health Informed Consent forms. In addition to the forms referenced in this policy, please refer to the following forms:

1. Harris Health Form 283344 Disclosure and Consent for Radiation Therapy;
2. Harris Health Form 283347 Disclosure and Consent for Postmortem Examination or Autopsy;
3. Harris Health Form 283030 Sterilization Consent Form.

C. Departmental Service or Procedure-Specific Consent Policies and Forms. Certain Harris Health departments may retain service or procedure-specific policies and forms not expressly mentioned in this policy. Please inquire with the appropriate department for further guidance.



POLICY AND REGULATIONS MANUAL

Policy No: 4215
Page Number: 22 of 29
Effective Date: 12/2006
Board Motion No:

REFERENCES/BIBLIOGRAPHY:

25 Texas Administrative Code § 601

Texas Family Code Chapter 32

Texas Family Code § 101.003(a)

Texas Family Code § 101.024(a)

Texas Civil Practice & Remedies Code §§ 74.101-74.107

Texas Health & Safety Code, Chapter 166

Texas Health & Safety Code Annotated., Chapter 313

Texas Health & Safety Code Annotated § 773.008

Texas Probate Code, Chapter XIII

Harris Health System Policy 7.07 End of Life Care Decisions

Harris Health System Policy 7.26 Consent to Treatment with Psychoactive Medication

Harris Health System Policy 4031 Pregnant Women, Consent for HIV Testing

Harris Health System Policy 4128 Advance Directives

Harris Health System Policy 4170 Blood/Blood Component Administration

Harris Health System Policy 4210 Autopsy

Harris Health System Policy 4217 Informed Consent: Sterilization

Harris Health System Policy 4315 Surrogate Decision-Makers

Harris Health System Policy 4500 Organ/Tissue Donation



POLICY AND REGULATIONS MANUAL

Policy No: 4215
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Board Motion No:

Harris Health System Policy and Procedure 4205 Patients Requesting to Leave Harris Health System Facilities or Refusing or Requesting Discontinuation of Treatment Against Medical Advice

Harris Health System Policy and Procedure 7.29 Electroconvulsive Therapy Program

Harris Health System 2015 Medical Staff Bylaws

Harris County Probate Courts located at <http://www.harriscountytexas.gov/probate/default.asp>

OFFICE OF PRIMARY RESPONSIBILITY:

Harris Health System Clinical Case Management

REVIEW/REVISION HISTORY:

This policy incorporates policy 4315 Surrogate Decision Maker

Effective Date	Version# (If Applicable)	Review or Revision Date (Indicate Reviewed or Revised)	Reviewed or Approved by: (If Board of Managers Approved, include Board Motion#)
	1.0	Revised 9/2006	HCHD Ethics Committee
		Reviewed 9/22/2006	CHP Executive Committee
		Reviewed 10/2/2006	BTGH Executive Committee
		Reviewed 10/4/2006	LBJGH Executive Committee
		Reviewed 10/10/2006	Medical Board
		Reviewed 11/7/2006	HCHD Policy Review Committee
12/7/2006			Board of Managers (No. 06.12-640)
	2.0	Revised 10/17/2007	Chief Nursing Executive
		Approved 11/06/2007	HCHD Policy Review Committee
	3.0	Revised/Approved. 2/14/2017	Structure and Organizational Standards
		Approved 2/14/2017	Interdisciplinary Clinical Committee
	4.0	Revised/Approved 05/09/2017	Structure and Organizational Standards
		Approved 05/09/2017	Interdisciplinary Clinical Committee
	5.0	Revised/Approved by Expedited –E-vote 05/16/2017	Interdisciplinary Clinical Committee
		Revised reference to form 280331 to include (or 280331S shaded version. 10/16/2017	

**APPENDIX A
GUARDIANSHIP REFERRAL LETTER AND PHYSICIAN'S
CERTIFICATE OF MEDICAL EXAMINATION**

Guardianship Referral

To: Harris County Probate Courts

Please note that this must accompany the original completed, doctor's mental status exam. Complete the below and any additional information to the extent possible to the Harris County Probate Clerk's office at 201 Caroline, 8th Floor, Houston, Texas, 77002, phone 713-755-6425 fax 713-755-5468. Physician's Certificate of Medical Examination can be obtained at: <http://www.hctx.net/probate/default.aspx>

Proposed Ward's Name (& AKA): _____

DOB: _____ First Language: _____ Admission date: _____

Current address: _____

Prior address: _____

Reason for referral of guardianship (brief summary of current situation): _____

Attending doctor name and contact info: _____

Social Worker's name and contact info: _____

Financial Income Source(s) & Amounts: _____

Family member or friends names and contact info: _____

Has the proposed ward executed a Power of Attorney: _____

Has the proposed ward executed an Advanced Directive to Physicians: _____

PHYSICIAN'S CERTIFICATE OF MEDICAL EXAMINATION

In the Matter of the Guardianship of _____, For Court Use Only
an Alleged Incapacitated Person, Court Assigned: _____

The purpose of this certificate is to enable the Court to determine whether the individual identified above is incapacitated according to the legal definition, and whether a guardian should be appointed to care for him or her.

DEFINITION OF INCAPACITY

For purposes of this certificate, an "Incapacitated Person" is "an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs." Texas Probate Code § 601(14).

GENERAL INFORMATION

Proposed Ward's Name _____

Date of Birth _____ Age _____ Gender ☐ M ☐ F

Current Location of Ward: _____

Physician's Name _____ Phone: (_____) _____

Office Address _____

☐ YES ☐ NO -- I am a physician currently licensed to practice in the State of Texas.

I have been the doctor for the Proposed Ward since _____

I last examined the Proposed Ward on _____, 20____ at:

☐ a Medical facility ☐ the Proposed Ward's residence

☐ Other: _____

☐ YES ☐ NO -- The Proposed Ward is under my continuing treatment.

☐ YES ☐ NO -- Prior to the examination, I informed the Proposed Ward that communications with me would not be privileged.

☐ YES ☐ NO -- A mini-mental status exam was given. If "YES," please attach a copy.

Based upon my last examination of the Proposed Ward, I provide the following information:

1. EVALUATION OF THE PROPOSED WARD'S PHYSICAL CONDITION

Physical Diagnosis: _____

Conditions underlying diagnosis: _____

a. Prognosis: _____

b. Severity: ☐ Mild ☐ Moderate ☐ Severe

c. Treatment: _____

2. EVALUATION OF THE PROPOSED WARD'S MENTAL FUNCTION

Mental Diagnosis: _____

Conditions underlying diagnosis: _____

a. Prognosis: _____

b. Severity: ☐ Mild ☐ Moderate ☐ Severe

c. Treatment: _____

☐ YES ☐ NO --- A summary of Proposed Ward's medical history is attached (if reasonably available).

☐ YES ☐ NO --- Would the Proposed Ward benefit from supports and services that would allow the individual to live in the least restrictive setting?

☐ YES ☐ NO --- Does this mental diagnosis include dementia?

PHYSICIAN'S CERTIFICATE OF MEDICAL EXAMINATION

2. EVALUATION OF THE PROPOSED WARD'S MENTAL FUNCTION, continued

- ☐ YES ☐ NO --- Would the Proposed Ward benefit from placement in a secured facility for the elderly or a secured nursing facility that specializes in the care and treatment of people with dementia?
- ☐ YES ☐ NO --- Would the Proposed Ward benefit from medications appropriate to the care and treatment of dementia?
- ☐ YES ☐ NO --- Does the Proposed Ward have sufficient capacity to give informed consent to the administration of dementia medications?

3. DECISION MAKING

Alertness, Attention, and Deficits

Alertness: ☐ Alert ☐ Lethargic ☐ Stupor

Proposed Ward is oriented to the following (check all that apply):

☐ Person ☐ Time ☐ Place ☐ Situation

In my opinion, the ability of the Proposed Ward to make or communicate responsible decisions concerning himself or herself is affected by the Proposed Ward's deficits and abilities as indicated:

Deficit(s) (check all that apply): ☐ Short-term memory ☐ Long-term memory ☐ Immediate recall

- ☐ YES ☐ NO --- Able to understand or communicate (verbally or otherwise)
- ☐ YES ☐ NO --- Able to recognize familiar objects and persons
- ☐ YES ☐ NO --- Able to perform simple calculations
- ☐ YES ☐ NO --- Able to reason logically
- ☐ YES ☐ NO --- Able to grasp abstract aspects of his or her situation or to interpret idiomatic expressions or proverbs
- ☐ YES ☐ NO --- Able to break complex tasks down into simple steps and carry them out
- ☐ YES ☐ NO --- The Proposed Ward's periods of impairment from the deficits indicated above (if any) vary substantially in frequency, severity, or duration

In my opinion, the Proposed Ward is able to make or communicate responsible decisions concerning himself or herself regarding the following:

A. Business and Managerial Matters; Financial Matters

- ☐ YES ☐ NO --- Contract and incur obligations; handle a bank account; apply for, consent to and receive governmental benefits and services; accept employment; hire employees; sue and defend on lawsuits; make gifts of real or personal property?
- ☐ YES ☐ NO --- If "YES," should amount deposited in any such bank account be limited?
- ☐ YES ☐ NO --- Execute a Durable Power of Attorney?
- ☐ YES ☐ NO --- Execute a Health Care Power of Attorney?

B. Personal Living Decisions

- ☐ YES ☐ NO --- Determine own residence?
- ☐ YES ☐ NO --- Safely operate a motor vehicle?
- ☐ YES ☐ NO --- Vote in a public election?
- ☐ YES ☐ NO --- Make decisions regarding marriage?

C. Medical Decision-Making

- ☐ YES ☐ NO --- Consent to medical, dental, psychological, and psychiatric treatment?
- ☐ YES ☐ NO --- Administer own medications on a daily basis?

D. Daily Life Activities

Administer to daily life activities (e.g., bathing, grooming, dressing, walking toileting):

☐ YES, independently ☐ YES, with assistance ☐ NO, requires total care

PHYSICIAN'S CERTIFICATE OF MEDICAL EXAMINATION

4. DEVELOPMENTAL DISABILITY

☐ YES ☐ NO --- Does the Proposed Ward have developmental disability?

If "YES," is the disability a result of the following? (Check all that apply)

☐ YES ☐ NO --- Mental retardation?

☐ YES ☐ NO --- Autism?

☐ YES ☐ NO --- Static Encephalopathy?

☐ YES ☐ NO --- Cerebral Palsy?

☐ YES ☐ NO --- Down's Syndrome?

☐ YES ☐ NO --- Other? Please Explain _____

DETERMINATION OF MENTAL RETARDATION

The court may not grant an application to create a guardianship if the basis for the Proposed Ward's incapacity is mental retardation unless a Determination of Mental Retardation is made. A Determination of Mental Retardation (Texas Health and Safety Code § 593.005) requires that the determination be based on an interview with the Proposed Ward and on a professional assessment.

The assessment, at a minimum, must include:

- 1) a measure of the Proposed Ward's intellectual functioning;
- 2) a determination of the Proposed Ward's adaptive behavior level; and
- 3) evidence of origination during the Proposed Ward's developmental period.

As a physician, you may use a previous assessment, social history, or relevant record from a school district, another physician, a psychologist, a public agency, or a private agency if you determine that the previous assessment, social history, or record is valid.

1. What is your assessment of the Proposed Ward's level of intellectual functioning and adaptive behavior?

☐ Mild (IQ of 50-55 to approx. 70)

☐ Moderate (IQ of 35-40 to 50-55)

☐ Severe (IQ of 20-25 to 35-40)

☐ Profound (IQ below 20-25)

2. ☐ Yes ☐ No---Is there evidence that the mental retardation originated during the Proposed Ward's developmental period?

5. EVALUATION OF CAPACITY

☐ YES ☐ NO --- Based on the information above, it is my opinion that the Proposed Ward is incapacitated according to the definition given at the top of page 1.

If "YES," please indicate the level of incapacity

☐ PARTIAL ☐ TOTAL

If you answered "YES" to any of the questions regarding decision-making in Section 3 (previous page) and believe the Proposed Ward is totally incapacitated, please explain: _____

If you answered "NO" to all of the questions regarding decision-making in Section 3 (previous page) and believe the Proposed Ward is partially incapacitated, please explain: _____

PHYSICIAN'S CERTIFICATE OF MEDICAL EXAMINATION

6. ABILITY TO ATTEND COURT HEARING

If a hearing on an application for the appointment of a guardian is scheduled in court:

☐ YES ☐ NO --- The Proposed Ward would be able to attend, understand, and participate in the hearing.

☐ YES ☐ NO --- Because of his or her incapacities, it would ***not*** be advisable for the Proposed Ward to appear at a Court hearing because the Proposed Ward would not be able to understand or participate in the hearing.

☐ YES ☐ NO --- Does any current medication taken by the Proposed Ward affect the demeanor of the Proposed Ward or his or her ability to participate fully in a court proceeding

7. ADDITIONAL INFORMATION OF BENEFIT TO THE COURT

If you have additional information concerning the Proposed Ward that you believe the Court should be aware of or other concerns about the Proposed Ward that are not included above, please explain:

Physician's Signature

Date

Physician's Name Printed

Revised December 6, 2010

ATTACHMENT B GUARDIANSHIP PROCESS FLOWCHART

THE GUARDIANSHIP PROCESS

