

	State of Indiana Indiana Department of Correction	Effective Date 4/1/2022	Page 1 of 5	Number 2.12A
HEALTH CARE SERVICES DIRECTIVE-ADULT Manual of Policies and Procedures				

Title CONSENT AND REFUSAL

Legal References (includes but is not limited to) IC 11-8-2-5 IC 34-4-12.6 IC 16-36-1	Related Policies/Procedures (includes but is not limited to) 01-02-101	Other References (includes but is not limited to) National Correctional Healthcare Standards
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I. PURPOSE:

This Health Care Services Directive (HCSD) describes the application of informed consent and informed refusal.

II. DEFINITIONS:

- A. **CAPACITY EVALUATION:** The assessment of one's ability to utilize information about an illness and proposed treatment options to make a choice that is congruent with one's own values and preferences.
- B. **CASE PLAN CREDIT TIME PROGRAM (CPCT):** An earned credit time cut structure that is driven by the needs indicated in the Indiana Risk Assessment System (IRAS) and incentivized through the individual case plan to provide each individual the opportunity to earn the maximum credit time, as allowed by law.

III. GUIDELINES:

A. General Comments

This directive will provide guidelines regarding the application of informed consent and refusal within Department facilities. If questions develop, legal advice should be sought early.

Incarcerated adults have the right to be informed regarding proposed health interventions and to either provide or withhold consent. It is the responsibility, within contemporary standards of care, for Health Services

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personnel to provide information adequate to permit informed decision making on the part of patients.

Simple health care interventions do not require explicit consent. Rather, consent for simple, non-dangerous interventions is implied by the patient's cooperation. As proposed health care interventions become more complicated and riskier, the need for formal consent increases. Formal written consent is clearly required when surgery (including dental extractions) or the use of dangerous drugs is proposed. Written consent should be in a language that is easily understood by the patient.

In emergency circumstances, when there is either no time for informed consent or when the patient's condition precludes informed consent, the presence of the patient in the treatment setting provides "presumed consent."

B. Capacity for personal autonomy

Personal autonomy or capacity for decision making is assumed unless there is reason to consider it is absent. When the patient appears to potentially lack decision making abilities, a capacity evaluation must be completed by a licensed psychiatrist. If the psychiatrist finds that the patient lacks capacity for decision making the decision-making authority falls to the next of kin. In the event that there is no available next of kin, Health Services staff shall seek legal advice to pursue guardianship. Legal guardians will hold the responsibility for decision making in this instance. It is important to note that patients who lack capacity to refuse care, also lack capacity to consent to care.

C. Public Health Considerations

Refusal of care necessary to the public health (for example, screening or treatment for a communicable disease) may result in the patient being separated from general population or in more extreme cases, court ordered treatment may be sought.

D. Hospitalized Patients

If a hospitalized patient lacks capacity to consent or refuse treatment, the hospital must pursue substituted judgment for consent or refusal. The most common source for substituted judgment is the next-of-kin on record, although formal guardianship may also be requested if next-of-kin is recorded by seeking legal advice.

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Unless guardianship has been assigned, Wardens have no special authority to provide substituted judgement and should advise the hospital personnel to handle the issue as they would for a non-prisoner.

E. Refusal Process

Any proposed health care intervention may be refused by a patient or when applicable, the legal guardian. Documentation of the refusal shall be completed in writing, witnessed by Health Services staff, and documented in the EMR via State Form, 9262, "Refusal and Release from Responsibility for Medical, Surgical, Psychiatric and Other Treatment." Informed refusal presumes that a knowledgeable provider has reviewed the refusal, considered the consequences of refusal on the patient's health, and discussed this with the patient or guardian. Informed refusals to comply with recommended health interventions may be documented as a lack of progress during reviews for patients who are participating in the Case Plan Credit Time process.

Repeated patterns of refusal may be documented in the health record and the licensed clinician may determine, through orders and treatment plans, that formal written refusal may be foregone. (In this event, documentation in the EMR of continuing counseling and refusal must continue.)

Refusals shall include:

1. A description of the health service being refused;
2. Documentation that the patient has been made aware of any adverse consequences to their health that may occur as a result of the refusal;
3. Recommendation regarding refusal;
4. The signature of the patient; and,
5. The signature of the Health Services staff witness

Operations personnel may report refusal to Health Services personnel, but refusal witnessed solely by Operations personnel may not be relied upon to be "informed refusal."

When a patient refuses health services but refuses to sign the refusal form, two (2) staff members may sign and witness the refusal form.

Refusal of critical interventions or the development of a pattern of refusal must be presented to and reviewed by a practitioner.

For patients that lack capacity for decision making, a refusal form will not be accepted.

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In routine circumstances, court intervention shall be sought. The court has the responsibility and authority to appoint a guardian who is authorized to make health care decisions on behalf of the patient. Legal Guardians must be kept informed and, in a position, to provide informed consent or refusal. If a court appointed guardian becomes unavailable, refuses to make any decision, or becomes otherwise unworkable as a guardian, the facility may request the Legal Services Division to take the matter back to court.

When questions or conflicts develop, facility personnel are advised to obtain consultation with Legal Services earlier rather than later.

III. APPLICABILITY:

This HCSD is applicable to all facilities housing incarcerated adults.

signature on file

Kristen Dauss, MD
Chief Medical Officer

Date