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SA Health

Policy

Consent to Health Care and Medical Treatment

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Government
of South Australia

SA Health

1. Name of Policy

Consent to Health Care and Medical Treatment

2. Policy statement

This Policy provides the mandatory requirements with regard to consent to medical treatment and health care within the common law, the *Consent to Medical Treatment and Palliative Care Act 1995* (Consent Act), the *Advance Care Directives Act 2013* (ACD Act), the *Mental Health Act 2009*, the *Guardianship and Administration Act 1993*, and other legislation governing the provision of health care within South Australia relevant to consent.

It is a legal, ethical, and professional requirement that all treating medical and health practitioners ensure informed consent is properly obtained.

Providing medical treatment or health care without valid consent may expose staff to disciplinary, regulatory, professional, civil or criminal proceedings.

3. Applicability

This policy applies to all health and medical practitioners within SA Health, that is all health and medical practitioners of the Department for Health and Wellbeing (DHW), Local Health Networks (LHNs) including state-wide services aligned with those Networks and SA Ambulance Service (SAAS), when providing medical treatment, medical assessment and/or health care.

4. Policy principles

SA Health's approach to consent is underpinned by the following principles:

- > We respect patients' right to autonomy and self-determination by acknowledging that patients over the age of 16 years with decision-making capacity have the right to consent or refuse to consent to medical and health care treatment.
- > We ensure that informed consent is validly obtained and appropriately timed.
- > We treat patients who do not have decision-making capacity in accordance with the appropriate legislative frameworks for consent which are:
 - Seeking consent to or refusal of treatment from:
 - substitute decision makers appointed under the [Advance Care Directives Act 2013](#)
 - persons responsible under the [Consent to Medical Treatment and Palliative Care Act 1995](#)
 - a guardian appointed under the [Guardianship and Administration Act 1993](#).
 - Providing emergency treatment without consent in accordance with the [Consent to Medical Treatment and Palliative Care Act 1995](#).
 - In accordance with the [Mental Health Act 2009](#).
 - In accordance with a court order.

5. Policy requirements

Obtaining valid consent

When providing health care and/or medical treatment health and medical practitioners must:

- > Ensure consent is confirmed, where possible, by the most senior health professional directly responsible for the assessment and/or treatment.

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- > Ensure **valid consent** is obtained from the patient by:
 - ensuring the patient has **decision making capacity**, and
 - providing sufficient information to the patient so they are **informed** of the nature, consequences and risks of the assessment and/or treatment including the consequences of not undertaking the treatment and any reasonable alternative treatments, and
 - ensuring consent is **specific** to the assessment, procedure, or treatment proposed, and
 - ensuring the patient's decision is **voluntary**.
- > Ensure an interpreter is engaged where a patient speaks limited or no English and/or requests an interpreter in accordance with the [Equity of Access, Interpreting and Translating Policy](#).
- > Ensure consent is documented in the person's medical record in accordance with the [Health Record Management Policy](#).

LHNs must have procedures in place to:

- > Ensure **written consent** is obtained, where possible, for treatment of a serious nature which has inherent risks, complications, or is regarded as sensitive including:
 - administration of an Anaesthetic.
 - administration of pre-operative medication that is likely to impair cognitive ability.
 - taking of photographs, video, and audio recordings.

SAAS must have procedures in place to:

- > Ensure express (written or verbal) consent is obtained, where possible, for treatment of a serious nature which has inherent risks, complications, or is regarded as sensitive including:
 - administration of an Anaesthetic.
 - administration of pre-operative medication that is likely to impair cognitive ability.
 - taking of photographs, video, and audio recordings.

Consent for children and young people

Medical practitioners and health practitioners:

Medical and health practitioners seeking consent for treatment for patients under 16 years, must, (in accordance with section 12 of the *Consent Act* for medical practitioners, and in accordance with the common law for health practitioners):

- > Seek the consent:
 - of the child if the medical or health practitioner is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment, or
 - of a parent or guardian.
- > Ensure the treatment is in the best interests of the child.

Medical practitioners:

In addition to the above, when seeking the consent of the child, medical practitioners must also:

- > ensure the opinion is supported by the written opinion of one other medical practitioner who personally examines the child.

LHNs and the SAAS must:

- > Ensure procedures are in place that require health practitioners to seek a second opinion, when seeking consent of the child, as appropriate.

Providing treatment where patients are unable to consent (not including children or young people)

- > All patients must be presumed to have decision-making capacity about their own medical treatment unless there is sufficient evidence to suggest otherwise following initial assessment.
- > Where a patient has impaired decision-making capacity, or is incapable of consenting, health and medical practitioners must only provide medical treatment and/or health care without patient consent where:
 - o a substitute decision maker under the [Advance Care Directives Act 2013](#) consents (not applicable to persons under 18 years), or
 - o a guardian appointed under the [Guardianship and Administration Act 1993](#) consents, or
 - o a person responsible under the [Consent to Medical Treatment and Palliative Care Act 1995](#) consents, or
 - o a community treatment order or an inpatient treatment order has been made under the [Mental Health Act 2009](#), or
 - o emergency treatment is required and meets the requirements outlined in [Mandatory Instruction 1](#).

Examination by students

- > Where a specific treatment is to be taught to students, the patient must be given a full explanation of the role of the medical students prior to the patient's consent being obtained.

Incident Reporting

- > Report incidents or near misses through the Safety Learning System (SLS) of occasions when consent was not effectively obtained in accordance with the [Clinical Incident Management Policy](#).

6. Mandatory related documents

The following documents must be complied with under this Policy, to the extent that they are relevant:

- > [Advance Care Directive Act 2013](#)
- > [Advance Care Directive Policy](#)
- > [Consent to Medical Treatment and Palliative Care Act 1995](#)
- > [Equity of Access, Interpreting and Translating Policy](#)
- > [Guardianship and Administration Act 1993](#)
- > [Health and Community Services Complaints Regulations 2019](#)
- > [Health Record Management Policy](#)
- > [Mental Health Act 2009](#)
- > [Minimising Restrictive Practices in Health Care Policy](#)
- > [Privacy Policy](#)
- > [Voluntary Assisted Dying Clinical Guideline for Health Practitioners](#)
- > [Voluntary Assisted Dying Policy](#)

7. Supporting information

- > [Australian Commission on Safety and Quality in Health Care – Partnering with Consumers Standard](#)

- > [Code of Conduct for Certain Health Care Workers – made under the Health and Community Services Complaints Regulations 2019](#)
- > [Consent Guideline](#)
- > [Elder abuse - What is decision making capacity?](#)
- > [Impaired Decision-Making Factsheet](#)
- > [National Boards' Professional Codes of conduct](#)
- > [National Principles for Child Safe Organisations](#)
- > [United Nations Convention on the Rights of the Child](#)

8. Definitions

- > **Decision-making capacity:** means a person has decision-making capacity, in relation to a specific medical treatment decision, if they can:
 - o Understand information relevant to the decision and
 - o Understand the risks and benefits of the choices and
 - o Remember the information (even if only for a short time) and
 - o Use that information to make the decision and
 - o Communicate the decision.
- > **Health practitioners:** means all individuals practicing a health profession recognised under the *Health Practitioner Regulation National Law (South Australia) Act 2010* and any other health professional with direct or indirect clinical contact who are credentialed by the relevant health service within SA Health.
- > **Indirect clinical contact:** means working in a role that requires accessing patient information, preparing or assisting other clinicians with patient related work, and providing clinical advice or clinical supervision to other clinicians.
- > **Impaired decision-making capacity:** means in respect of a particular decision the person is not capable of:
 - o Understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision) or
 - o Retaining such information, or
 - o Using such information in the course of making the decision, or
 - o Communicating their decision in any manner, or
 - o The person is, by reason of being comatose or otherwise unconscious, unable to make a particular decision about their medical treatment.
- > **Medical practitioners:** means a person who is registered under the *Health Practitioner Regulations National Law (South Australia) Act 2010* in the medical profession, dentists, and for the purposes of this policy, a person registered under the *Health Practitioner Regulations National Law (South Australia) Act 2010* in a dental profession (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist, and oral health therapist).
- > **Medical treatment:** means, in accordance with the definition in the *Consent to Medical Treatment and Palliative Care Act*, the provision by a medical practitioner of physical, surgical or psychological therapy to a person (including the provision of such therapy for the purposes of preventing disease, restoring or replacing bodily function in the face of disease or injury of improving comfort and quality of life) and includes the prescription or supply of drugs.
- > **Person responsible:** means a person responsible for a patient as defined under section 14 of the *Consent to Medical Treatment and Palliative Care Act 1995* and in the following legal hierarchy (i.e. consent can only be sought from a subsequent party if the earlier option has been excluded):

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1. a guardian (provided their powers have not been limited to the extent that they exclude making medical decisions)
 2. a prescribed relative (being a person who is legally married to the patient, an adult domestic partner, an adult related by blood or marriage, adult related by adoption, an adult of aboriginal or Torres Strait Islander descent who is related to the patient according to kinship rules) who has a close and continuing relationship with the patient
 3. an adult friend who has a close and continuing relationship with the patient
 4. an adult who is charged with overseeing the ongoing day-to-day supervision care and wellbeing of the patient
 5. the South Australian Civil and Administrative Tribunal on application of a prescribed relative, the medical practitioner proposing to provide treatment or any other person who the Tribunal is satisfied has a proper interest in the matter.
- > **Substitute decision maker:** means a substitute decision maker appointed in an advance care directive under the *Advance Care Directives Act 2013*.
- > **State-wide services:** means State-wide Clinical Support Services, Prison Health, SA Dental Service, BreastScreen SA and any other state-wide services that fall under the governance of the Local Health Networks.
- > **Voluntary:** means when a person makes a decision about their health care, they are not subject to pressure or coercion.

9. Compliance

This policy is binding on those to whom it applies or relates. Implementation at a local level may be subject to audit/assessment. The Domain Custodian must work towards the establishment of systems which demonstrate compliance with this policy, in accordance with the requirements of the [Risk Management, Integrated Compliance, and Internal Audit Policy](#).

Any identified systemic non-compliance with this policy must be reported to the Domain Custodian for the Legal and Corporate Governance Domain and the Domain Custodian for the Risk, Compliance and Audit Policy Domain.

10. Document ownership

Policy owner: Domain Custodian for the Legal and Corporate Governance Policy Domain

Title: Consent to Health Care and Medical Treatment Policy

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Contact for enquiries: healthpolicylegislation@sa.gov.au

11. Document history

Version	Date approved	Approved by	Amendment notes
1.0	28/03/2024	Chief Executive, Department for Health and Wellbeing	Replaces the Providing medical assessment and/or treatment where patient consent cannot be obtained Policy Directive and the Consent to Medical Treatment and Health Care Policy Guideline in accordance with the updated Policy Framework

12. Appendices – Mandatory Instruction 1

The following Instruction must be complied with to meet the requirements of this policy.

Emergency Medical Treatment and Health Care

If treatment is an emergency, it must only be provided in accordance with the below.

Emergency treatment by a medical practitioner:

Where emergency medical treatment is required a medical practitioner (or a person participating in the treatment of the patient under the medical practitioner's supervision) must only provide medical treatment without consent (in accordance with section 13 of the [Consent to Medical Treatment and Palliative Care Act 1995](#)) where:

- > the patient is incapable of consenting, and
- > the medical practitioner is of the opinion that the treatment is necessary to meet an imminent risk to life or health and this opinion is supported (where practicable) by another medical practitioner who has personally examined the patient, and
- > the patient has not refused to consent to the treatment (to the best of the medical practitioner's knowledge), and
- > the medical practitioner has made or caused to be made reasonable inquiries about whether the patient (if over the age of 18) has given an advance care directive, and
- > a substitute-decision maker, guardian, or person responsible is not available to consent on behalf of the patient and
- > if the patient is under the age of 16 the parent's or guardian's consent must be sought (however the emergency treatment may be provided despite a refusal to consent where the medical practitioner believes that it is in the best interests of the child's health and well-being).

Emergency treatment by a health practitioner:

Where emergency treatment or care which is not medical treatment is required a health practitioner (other than a medical practitioner) must only provide treatment (or transport to facilitate treatment) without consent (in accordance with the common law defences to civil claims and statutory defences to criminal charges) within their scope of practice where:

- > the patient is incapable of consenting, and
- > the health practitioner is of the opinion that the treatment (or transport to facilitate treatment) is necessary to meet an imminent risk to life or health, and
- > the health practitioner reasonably believes that providing the treatment (or transport) is the only reasonable way to deal with the situation, and
- > the patient has not refused to consent to the treatment (or transport) (to the best of the health practitioner's knowledge), and
- > there have been reasonable inquiries about whether the patient (if over the age of 18) has given an advance care directive, and
- > a substitute-decision maker, guardian, or person responsible is not available to consent on behalf of the patient and
- > if the patient is under the age of 16 the parent's or guardian's consent must be sought (however the emergency treatment (or transport) may be provided despite a refusal to consent where the health practitioner believes that it is in the best interests of the child).