

PATIENT'S RIGHT TO CONSENT TO TREATMENT, POLICY NO. 9.02

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TITLE: PATIENT'S RIGHT TO CONSENT TO TREATMENT

PURPOSE: To ensure patients are apprised of their rights and afforded the opportunity to make voluntary and fully informed decisions about medical care and treatment. This policy supersedes policy dated 10/30/2013, and any other policy previously written regarding a patient's right to consent. [Key words: Consent, Disclosure of Risks and Hazards, Medical Power of Attorney, Surrogate Decision-Maker, Emergency Medical Treatment, Communicable Disease Testing, Implied Consent, Minors, Blood Specimens for Legal Purposes, Refusal to Consent]

POLICY STATEMENT:

Physicians on the medical staff are responsible for ensuring that their patients (or the appropriate person acting on the patient's behalf), receive the information necessary to make informed choices and decisions regarding medical care and treatment, and documenting such advice and consent, or refusal to consent, in the medical record.

POLICY ELABORATION:

A competent adult patient or surrogate agent acting on the patient's behalf has the right to receive from the patient's physician information necessary to make informed choices and decisions regarding the patient's medical care and treatment. The primary purpose of the informed consent process is to ensure that the patient or his/her agent is provided information in a manner they can understand to enable them to evaluate a proposed procedure or treatment before consenting to or declining the procedure/treatment. Informed consent is a process and not just a form. This policy applies to all Health System patients, whether receiving care at University Hospital, an Ambulatory Surgical Center, or any Health System clinics, and also extends to inmates/patients receiving medical care while in the custody of the Bexar County Sheriff and/or other law enforcement agencies.

I. DEFINITIONS UNDER THE CONSENT TO MEDICAL TREATMENT ACT

- A. Adult** – a person 18 years of age or older, or a person under 18 years of age who has had the disabilities of minority removed.
- B. Clergy** - a minister, deacon, priest, rabbi, imam, swami, or other similar functionary in good standing of a recognized religious organization.
- C. 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.
- D. Incapacitated** – 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.
- E. 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.
- F. Patient** – a person who is admitted to a hospital or receiving treatment in a Health System clinic or ambulatory surgical center.
- G. 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. INFORMED CONSENT

A. Required Disclosures and Forms

The Texas Medical Disclosure Panel determines which risks and hazards related to medical care and surgical procedures must be disclosed to patients and has established the general form and substance of such disclosure. The panel developed two lists: "List A," which identifies medical and surgical procedures requiring disclosure of risks and hazards to the patient; and "List B," which, conversely, identifies procedures determined by the panel not to require disclosure of risks and hazards.

List A procedures and their risks are identified on each of the Health System's "Disclosure and Consent Informed Consent Forms" provided by the Health System and attached to this policy.

Additional risks and hazards not contained in List A can be discussed and documented if the physician wishes to do so. Procedures, risks, and hazards should be explained and documented in terms that are easily understood without the use of abbreviations. Texas Medical Disclosure Panel's List B treatments and procedures do not require disclosure to a patient or his agent but consent may be obtained if the physician wishes. If a procedure is not on List A or List B, a physician is under a general duty "to disclose the risks or hazards that would influence a reasonable person's decision to give or withhold consent."

B. Physician Responsibility

The physician, anesthesiologist, dentist, or podiatrist ordering or performing the medical procedure, surgery, or administration of anesthesia has a duty to the patient to disclose the procedure(s) to be done, risks, hazards, and benefits of the procedure(s), including possible alternatives and risks of non-treatment. An

attending physician may delegate the informed consent patient communication process to

1. A member of the medical staff (e.g., intern, resident or fellow) and/or to an allied health professional as defined in the University Health System Bylaws of the Medical-Dental Staff , with knowledge of procedure(s) to be performed
2. Medical students may not obtain informed consent for any procedure

The informed consent process is not delegated to Health System nurses with the exception of Registered Nurses designated to insert Peripherally Inserted Central Catheters (PICC Lines) and who obtain informed consent for that procedure after it is ordered by a physician or allied health professional with order-writing authority.

C. Documentation of Informed Consent

With the exception of emergency procedures/surgery as discussed more thoroughly in Section V, all informed consent forms must be signed by the physician/allied health professional who explained the procedure(s), risks, and hazards and must include the Health System-designated “provider number.” The informed consent also must be signed by the patient or, if patient is incapacitated, by the designated surrogate. The consent form also must be signed by a third-party witness who witnessed or verified that the physician or his/her agent explained to the patient or surrogate the procedure to be done and the risks associated with the procedure(s). There is no legal limitation as to who may sign as a witness, but the preoperative/pre-procedure verification of completion of the informed consent form must be done by Health System staff. The informed consent process is not complete unless the times and dates of

the referenced required signatures are also documented accordingly.

If a patient arrives in the surgical or procedure area and the Informed Consent form is incomplete, Health System staff will verify with the patient or surrogate that the physician has explained the procedure(s), risks, and hazards and will complete the form accordingly. If a physician signature is missing, and/or the patient/surrogate has questions regarding the procedure(s), risks or hazards, the physician scheduled to perform the procedure/surgery will be notified that completion of the informed consent process is necessary prior to the surgery or procedure.

D. Language and Cultural Considerations

Language and/or cultural barriers will be considered to ensure that the patient and /or his surrogate understand the proposed treatment/procedure(s). The Health System provides interpreter and translation services to patients and surrogates with limited English proficiency or hearing impairment. Procedures, risks and hazards should be explained and documented in terms that are easily understood without the use of abbreviations. See Health System Policy No. 9.19, Interpreter Services, regarding access to language line and translation services.

E. Informed Consent Received Via Telephone or Facsimile

1. Informed consent may be obtained from the patient's surrogate by telephone when the patient is incapacitated and when the treating physician determines that a delay in treatment while awaiting arrival of the surrogate would cause harm to the patient. When seeking informed consent by phone
 - a. Procedure(s), risks, hazards and benefits must be

disclosed as would be done in person.

- b. The discussed procedure(s), date and time of the telephone conversation, as well as the name of the person giving consent must be documented on the applicable Disclosure and Consent form.
 - c. The phone conversation must be witnessed or verified by another person, who also documents accordingly on the Disclosure and Consent form.
2. Informed Consent forms received via facsimile are acceptable and must be verified for completeness and become a part of the patient's medical record. The person who sent the fax must be given the contact information and instructions to send the original to the Health System Medical Records Department as soon as possible.

The same principles of the consent communication process can be applied to other evolving electronic means of communication. When sharing PHI in this manner, however, precautions should be taken to ensure a secure line and that no other patient's privacy is compromised in a visual transmission.

F. Documentation of Patient's Inability to Sign

If a patient has capacity and can communicate his/her consent to a procedure, but is unable to sign a consent form due to impaired vision, physical impairments, or illiteracy, the witness should write "Patient unable to sign" on the consent form and document the reason for patient's inability to sign. The additional signature of a second witness is required. If the patient is able to write an "X" in lieu of his/her signature, this is acceptable and must also be witnessed or verified by two people.

III. WHO MAY CONSENT?

A. General

1. An adult patient, including prisoners, with decision-making capacity
2. Parents or legal guardians of a minor child. This includes a Child Protective Services representative if Child Protective Services has been ordered to be Managing Conservator of child and/or a foster parent who has the documentation to verify that Child Protective Services has delegated this authority
3. A surrogate decision-maker. If an adult hospital patient is comatose, incapacitated or otherwise mentally or physically incapable of communication, an adult surrogate decision-maker who is willing to consent to medical treatment on behalf of the patient, may consent to medical treatment.

B. Determination of Surrogate

If an adult patient in a hospital 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 and is available after a reasonably diligent inquiry, may consent on behalf of the patient:

1. The individual who was clearly identified by the patient to act as surrogate as documented in a Medical Power of Attorney/ Directive to Physician before the patient became incapacitated
2. The patient's spouse, including common law spouse

3. 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
4. A majority of the patient's reasonably available children
5. The patient's parents
6. The patient's nearest living relative
7. A member of the clergy. Consent by a member of the clergy should ideally be limited to persons with whom the patient had established a clergy-patient relationship but in cases where no surrogate can be identified, and the search is documented accordingly, an Ethics Consult should be initiated to determine if the situation is appropriate to initiate the process outlined in Attachment 1 to care for the Unrepresented Patient.

Except as allowed for Emergency Treatment, treating physicians are not to act as surrogate decision-makers for consent to treatment.

C. Prerequisites for Consent by a Surrogate

1. Identification of persons eligible to serve as surrogates is everyone's job. Information received from visitors and/or from patient's personal effects must be documented and referral made to Care Coordination for follow-up. Efforts to identify and contact eligible surrogate(s) will be further pursued by Care Coordination and documented in the patient's medical record.
2. Prior to securing the consent of a surrogate, documentation in the patient's medical record must reflect the

- a. Patient's comatose state, incapacity, or other mental or physical inability to communicate
 - b. Proposed medical treatment
3. If a surrogate is available in person and consents to treatment on behalf of the patient, the date and time of consent must be noted in the patient's medical record and if applicable, the informed consent form for a specific procedure/treatment must be signed by the surrogate with signatures from the physician who explained the procedure and from the witness. If the surrogate's consent is made by phone, email, Skype, or by any other electronic means, documentation in the patient's medical record must reflect the same.

D. Nature of and Limitation of Surrogate Consent

The medical treatment consented by the surrogate must be based on what the patient would desire, if known. The surrogate may not consent on behalf of the patient, however, to the following:

1. Voluntary inpatient mental health services
2. Electroconvulsive treatment
3. Appointment of another surrogate

Additionally, if the patient is an adult inmate of a county jail, a surrogate may not consent to

1. Psychotropic medication
2. Involuntary inpatient mental health services
3. Psychiatric services calculated to restore competency to stand trial

E. Consent To Treatment: Distinction from Advance Directives Act

The Consent to Medical Treatment Act does not apply to consent to withhold or withdraw life-sustaining treatment from a qualified terminal or irreversible patient. Consent to withhold or withdraw care is governed by the Advanced Directives Act. See Policy No. 9.07, Advance Directives, for more information regarding the Directives of Physicians or a Medical Power of Attorney.

F. Appointment of Guardian

Absent a surrogate decision maker related to the patient or a person to make decisions as authorized by a medical power of attorney, , appointment of a Guardian by Bexar County Probate Court can be requested to facilitate continuum of care and consent for treatment of an incompetent or incapacitated adult patient in a non-life-threatening situation. Guardianship application process generally takes 6-8 weeks and Consent by Clergy as discussed in Section III B -7 can be considered while appointment of guardian is pending.

The Guardian is generally given specific powers and authority to make treatment decisions by the Court. Requests should be forwarded to Legal Services through the Care Coordination Department. Documentation in the patient's medical record must reflect all efforts to find next of kin and/or a surrogate as well as all contact information of any known relatives. In contrast to a surrogate decision maker/ Medical Power of Attorney who is tasked with making decisions based on what the patient would have wanted; a guardian makes treatment decisions based on what is in the best interest of the patient, who is also referenced as a "Ward." Copies of all Court Orders appointing Guardian and/or Letters of Guardianship must be incorporated into the patient's medical record.

F. Patients Residing in State Supported Living Centers ICF/MR Facilities

“ICF/MR” is the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities, and Texas law has allowed additional safeguards to facilitate authorization to provide medical and dental treatment to persons committed or admitted to ICF/MR facilities. This authorization does not allow the performance of any operation involving sexual sterilization or frontal lobotomies. If the patient lacks the capacity to consent to medical treatment, consent should be secured from the person's legal guardian or managing conservator. However, in the absence of a legal guardian or actively involved parent, stepparent, adult sibling or other adult relative, ICF/MR Facilities are mandated to maintain a list of individuals qualified to serve on a surrogate consent committee and designate an individual to make treatment decisions to promote the patient/ICF/MR resident’s best interests. Documentation to reflect this designation of surrogate should be with the patient upon arrival at any Health System facility, but if not, the facility should be contacted to fax it to the appropriate Health System fax number for verification and insertion into the patient’s medical record.

IV. MEDICAL TREATMENT OF MINORS

A. General

A child or minor patient is generally not authorized to consent to medical treatment. For the purpose of medical consent, a child or minor means "a person under 18 years of age who is not and has not been married or who has not had his/her disabilities of minority removed for general purposes."

Generally, consent to "medical, dental, psychiatric, psychological and surgical treatment" for a child is the right of a parent, a

managing conservator, or the guardian of the child. If a parent or other person having the power to consent as otherwise provided by law cannot be contacted, and actual notice to the contrary has not been given by that person, any of the following persons may consent to medical treatment.

1. A grandparent
2. An adult brother or sister
3. An adult uncle or aunt
4. An educational institution in which the minor is enrolled that has received written authorization to consent from the person having the power to consent as otherwise provided by law
5. Any adult who has care, control and possession of the minor and has written authorization to consent from the person having the power to consent as otherwise provided by law
6. Any court having jurisdiction of the child
7. An adult responsible for the care, control and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county
8. A peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor needs immediate medical attention. This provision is also applicable for minors brought to University Hospital by law enforcement for emergency detention
9. The Texas Youth Commission, which may consent to the

medical treatment of any minor committed to it under the Texas Family Code when the person having the power to consent has been contacted and actual notice to the contrary has not been given.

B. Assent

In the healthcare setting, Assent is a child's voluntary agreement with plans for his/her own medical care plan. Assent of a pediatric patient should be sought as appropriate based on age and development. Only in rare circumstances should children older than 11 years old be excluded from discussions regarding their care plan. Conflicts between the desires of the pediatric patient and those of the parents/guardians should be carefully evaluated and may benefit from an Ethics Consultation.

C. Consent to Treatment by an Emancipated Minor

A minor may consent to the furnishing of hospital, medical, psychological, surgical, and dental care by a licensed physician or dentist in certain circumstances; specifically if the minor

1. Is on active duty with the armed services of the United States of America
2. Is 16 years of age or older and resides separate and apart from his/her parents, managing conservator or guardian, whether with or without the consent of the parents, managing conservator or guardian and regardless of the duration of such residence, and is managing his/her own financial affairs, regardless of the source of income
3. Consents to the diagnosis and treatment of any infectious, contagious, or communicable disease which is required by law or regulation adopted pursuant to law to be reported by the licensed physician or dentist to a local health officer or

the Texas Department of State Health Services and including all sexually transmitted diseases

4. Is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy
5. Is unmarried, is the parent of a child, and has actual custody of his/her child and consents to medical, dental, psychological or surgical treatment for the child
6. 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.

If the minor child presents him/herself as an emancipated minor in accordance with the criteria listed in this section, health care providers may rely on the written statement of the child containing the grounds on which the child has capacity to consent to his/her own treatment. Thus the "Declaration of Minor" section of the University Health System General Consent to Treatment Form BCHD -178 must be completed.

D. Notification of Parent Without Consent of Minor

"A licensed physician, psychologist or dentist may, with or without the consent of a minor who is a patient, advise the parents, managing conservator, or guardian of the minor about the treatment given to or needed by that minor."

CAVEAT: Federal law prohibits the disclosure of health care information regarding a minor undergoing alcohol or drug abuse treatment to anyone, including the minor's parents or guardians, without the written consent of the minor. Also, guidelines for family planning services funded through Title X or Title XIX

prohibit disclosure without the minor's consent.

However, facts relevant to reducing a threat to the life or physical well-being of the minor may be disclosed to the parent, guardian or other person legally authorized to act on behalf of the minor if

1. The physician determines that the minor lacks capacity because of extreme youth or mental or physical condition to make a rational decision whether or not to consent to the disclosure, AND
2. The minor's situation poses a substantial threat to the life or physical wellbeing of the minor that may be reduced by communicating relevant facts to the minor's parents, guardian or other person legally authorized to act on behalf of the minor.

V. EXCEPTIONS TO INFORMED CONSENT

A. Overview

In certain situations the patient's informed consent is not required to be obtained before performance of a medical treatment or surgical procedure. In addition to the procedures included within the Texas Medical Disclosure Panel List A, the exceptions to the general requirement of informed consent, as discussed below, include

1. Emergency medical treatment
2. Blood specimens drawn for legal purposes
3. A signed, executed general consent to treatment form for HIV and communicable disease diagnostic testing

B. Emergency Medical Treatment

1. **Adults:** Texas law presumes the existence of legally

adequate consent (“implied consent”) by a patient for treatment in a medical emergency. This presumption applies only if the individual is unable to communicate because of an injury, accident, or illness, or is unconscious and suffering from what reasonably appears to be a life-threatening injury or illness. The emergency medical treatment must be imminently necessary to save the patient's life, limb or prevent serious permanent impairment or dysfunction of any bodily organ or part. The circumstances surrounding the treatment will be documented in the medical record.

2. **Minors:** This presumption of implied consent also applies if the individual is a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parents, managing or possessory conservator, or guardian is not present.
3. **Scope of Implied Consent:** What constitutes a medical emergency is a matter of medical judgment. Consent cannot always be implied in an emergency. If an adult patient has the mental capacity at the time of the emergency to reach an informed choice about treatment and refuses treatment, consent cannot be implied.
4. **Documentation for Emergency Treatment:** The treating physician is responsible for writing a progress note describing the nature of the medical emergency and patient's lack of ability to communicate and/or incapacity.

C. **Blood Specimens Drawn for Legal Purposes**

1. Consent to provide a breath or blood sample is implied by law pursuant to the privilege to use Texas highways and waterways. This implied consent of the Texas Transportation Code allows health care providers to obtain

a blood specimen for the purpose of analysis to determine alcohol concentration or the presence of controlled substances or dangerous drugs when a Peace Officer requests such a specimen based on the officer's reasonable belief that the patient was a driver of a motor vehicle on a public Texas highway, was involved in an accident and the police officer believes that as a direct result of the accident

- a. Any individual has died or will die
- b. An individual other than the driver has suffered serious bodily injury
- c. An individual other than the driver has suffered bodily injury and been transported to a hospital or other medical facility for medical treatment
- d. An individual is under arrest for Driving While Intoxicated with Child Passenger
- e. The officer has reliable information that the individual has prior conviction for applicable intoxication offenses.

The Bexar County District Attorney currently requires that only RNs or LVNs may draw blood for legal purposes.

2. No search warrant or consent of individual is required to obtain blood specimens for the scenarios described in Section 1, a-e above. Peace officers may, however, present a search warrant signed by a judge or qualified magistrate to obtain a blood specimen of an individual under arrest for other criminal offenses not listed above (i.e., driving while intoxicated) when the driver has refused to give a voluntary sample of his/her breath or blood, which allows the drawing of a blood specimen

without the consent of the patient/accused person.

3. Person Incapable of Refusal: In accordance with Texas law, in cases where a person is dead, unconscious, or otherwise incapable of refusal to provide consent to obtain a blood specimen is implied and can be obtained without specific consent as requested by law enforcement as outlined in C.1., a-e.

D. Communicable Disease Testing

A person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign a specific consent form relating to medical tests or procedures to determine HIV infection, or presence of any other communicable disease as related to medical treatment. Also, in a case of accidental exposure to blood or other body fluids a health care agency or facility such as Health System may test a person who may have been the source of communicable disease exposure to the health care worker, law enforcement officer, fire fighter, and paramedic or correction officer without the person's specific consent to the test.

Consent of the "source" is preferred but in those cases when the source of the possible exposure refuses to consent to testing, the refusal should be documented and if the accidental exposure involves a Health System employee, the House Supervisor should be contacted. If there are other blood specimens that were previously drawn on the "source" patient that are still available and in appropriate vials, they can be utilized for testing for HIV and other communicable diseases to determine the status of the "source" and treatment options of the person who had the accidental exposure. If no blood specimens are available, and the "source" continues to refuse to consent, Legal Services and/or Infectious Disease Department should be

contacted. More information is available from Infection Control Policy 5.7, “Blood Borne Pathogens Exposure Control Plan.”

VI. REFUSAL TO CONSENT

A. An adult patient who is conscious and has capacity to make treatment decisions has the right to refuse treatment, including the right to refuse treatment based on religious reasons, and such refusal to consent to treatment must generally be honored. Exceptions to this general rule include persons detained under an Emergency Detention. A patient’s refusal to consent as well as a patient’s revocation of prior consent should be documented in the patient’s medical record.

B. “Informed Consent to Refuse” BCHD Form #185 NS should be used whenever an adult patient with capacity to make decisions refuses care or treatment. The Informed Consent to Refuse (AMA) Form should also be used to document whenever a patient leaves the facility against medical advice and placed in the patient’s medical record. The form must be filled out and signed in the space marked “witness’ signature” by the person who advises the patient and/or family members of the risks and benefits.

C. Refusal to Consent for Treatment of a Child

If a parent or guardian refuses to consent to treatment of a minor child, the reason for the refusal should be ascertained and documented to determine the reason(s). Social Work should be called to evaluate the situation for elements of abuse and neglect and determination of necessity of referral to Texas Department of Protective & Regulatory Services (CPS). If the refusal is for blood transfusion for a child, all appropriate possible blood alternatives must be explored as outlined on BCHD Form # 417 NS before Social Work is called and the family should be given the opportunity to contact the Jehovah Hospital Liaison for the

San Antonio area. Refer to Health System Policy No. 9.02.01 for additional information.

VII. DURATION OF CONSENTS

A. Overview

An informed consent is valid only for a reasonable period of time, i.e., for the term of the patient's hospital admission for a specific treatment or procedure. Any change in the proposed procedure requires completion of another consent form. A new consent form is completed each time that the patient is to undergo an invasive procedure.

Informed consent forms signed by a patient in an outpatient office/clinic in anticipation of surgery in a Health System facility are valid if current with Provider Review of History & Physical.(BCHD Form 300), unless there is evidence that the patient has revoked consent or the procedure is changed.

B. Consent for Administration of Blood

If the patient provided consent for administration of blood and blood products under the auspices of the consent to surgical, invasive, diagnostic and therapeutic procedures, the consent for the administration of blood remains in effect for the duration of the hospitalization unless the patient or surrogate revokes the consent or if the hospitalization is in excess of 30 days.

C. General Consent to Treatment and Conditions of Admission

A signed General Consent to Treatment and Conditions of Admission is valid for the length of the hospitalization. In the ambulatory setting, the General Consent to Treatment and Conditions of Admission should be verified at each visit and signed at least once every twelve months.

D. Long-term Treatment

Treatment protocols, including, but not limited to, infusion therapy, hyperbaric therapy, chemotherapy, radiation therapy, or hemodialysis, require consent prior to initiation but not with each subsequent visit for the same treatment protocol. All outpatient re-occurring procedures are valid for 30 days unless revoked by patient or the procedure(s) is modified.

E. Sterilization Forms

In addition to Disclosure and Informed Consent forms for Hysterectomy, Fallopian Tubal Ligation and Vasectomy, Texas Department of State Health Services requires additional documentation for Medicaid patients to ensure understanding of the permanency of sterilization. The patient must be at least 21 years of age and the additional Sterilization Consent Form must generally be signed at least 30 days before the surgical procedure but can be signed at least 72 hours before the procedure in cases requiring emergency abdominal surgery or premature delivery.

F. Revocation

An adult patient, including an emancipated minor has the right to revoke, cancel, or withdraw his/her consent at any time, verbally or in writing. A patient's revocation of consent must be communicated to the patient's physician and documented in the patient's medical record.

VIII. CONSENT TO PHOTOGRAPHS/VIDEO

A signed General Consent to Treatment and Conditions of Admission authorizes a patient's physician or the physician's designee to record or film the patient's likeness utilizing photographic, video, electronic or audio media for identification, diagnosis, treatment, education

and/or training. Before any other photos or videos for any other purpose can be taken of a patient within Health System facilities, beyond the usual personal family pictures such as childbirth, the consent of the patient or his/her surrogate must be obtained utilizing Consent Form BCHD 7-349, entitled Consent Form for Photos, Interviews, Audio and Video. Instructions must be given to all photographers to respect the privacy of other patients to ensure that they are not included in any audio visual material.

IX. CONSENT FOR A TELEMEDICINE VISIT

Telemedicine is the use of medical information exchanged from one site to another via electronic live interactive video or the use of store and forward transmission of diagnostic images, vital signs, and/or video clips along with patient data to improve a patient's clinical health status. If a patient would benefit medically from a consultation with another provider at a remote location that can be promptly facilitated through electronic communication, the telemedicine process will be explained to the patient and the consent of the patient or his/her surrogate must be obtained before initiating the secure exchange of information. BCHD Form 408, Consent for a Telemedicine Visit, is the detailed consent form to be used.

OFFICE OF PRIMARY RESPONSIBILITY:

Vice President, Legal Services

REFERENCES:

2013 Joint Commission Standard RI.01.03.01

CMS Medicare Conditions of Participation: §482.13, §482.51, §482.24

25 Texas Administrative Code Part 7 Chapter 601

Texas Health & Safety Code §81.050, §81.107, §85.201 §313, & §773.008

Texas Civil Practice & Remedies Code §146

Texas Family Code §32 & §262
Texas Rules of Evidence Article 505

Texas Transportation Code §724

Health System Infection Control Manual, Section 5.7, Bloodborne Pathogens
Exposure Control Plan

ENDNOTES:

1. Texas law views competence in specific terms, i.e., with regard to a specific task rather than in general terms. The particular task in a hospital setting is whether the patient has the capacity to make health care decisions. "Competent" means "possessing 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 a proposed treatment decision." Texas Health & Safety Code § 166.002(4)
2. The definition of "adult" is not fixed under Texas law. Moreover, in certain medical areas such as mental health services and the diagnosis and treatment of infectious, contagious or communicable disease, minors may give "consent" like an adult. In general, however, an adult for medical consent purposes is "a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed." Texas Health and Safety Code §166.151(1) See also Texas Family Code §101.003(a)
3. 25 Texas Administrative Code Part 7 Chapter 601
4. Texas Civil Practice & Remedies Code §74.104 Peterson v Shields, 652 S.W.2d 929 (Tex. 1983)
5. Texas Family Code §151.003(a)(6)
6. Texas Family Code §266.004 -- Court may authorize the following persons to consent to medical care for a foster child:
An individual designated by name in an order of the court, including the child's foster parent or the child's parent, if the parent's rights have not been terminated and the court determines that it is in the best interest of the parent's child to allow the parent to make medical decisions on behalf of the child
7. Tex. Health & Safety Code § 313.004 sets forth the authority of a surrogate decision-maker to consent for medical treatment on behalf of the patient. The Act uses the terminology "incapacitated" but its definition (§313.002) tracks the same language as "incompetent" in the Advance Directives Act, §166 of the Tex. Health & Safety Code. (see endnote 1)
8. Texas Health & Safety Code Ann. § 313.001, et seq.
9. "Common law" or informal marriages are recognized in Texas. To establish a common law marriage, there must be an agreement to be husband and wife (not necessarily in writing); the parties must live together as such; and there must be a "holding-out" to the public that the couple are husband and wife. An undisputed representation by one spouse, that the couple is married under common law may be accepted without actual proof or further inquiry. However, in the event the existence of a common law spouse is disputed, proof of the informal marriage as defined in Texas Family Code §2.401 should be requested. Without such recognition, the Adult Surrogate next in priority may serve to consent on behalf

- of the patient.^[1] Any dispute as to the right of a party to act as a surrogate may be resolved only by a court of record having jurisdiction under Chapter V of the Texas Probate Code.
10. Texas Probate Code, Chapter XIII §668 allows the Health System to send an information letter to a Probate Court to request initiation of Guardianship proceedings, and must include:
 - (1) Name, address, telephone number, county of residence, and date of birth of the person;
 - (2) Names and telephone numbers of any known friends and relatives of the person;
 - (3) Describe any property of the person, including the estimated value of that property;
 - (4) List any amount and source of monthly income of the person; and
 - (5) Describe the nature and degree of the person's alleged incapacity and include a statement of whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate. (Medical Opinion Form to be completed by physician)
 11. Texas Health & Safety Code §597.041 et seq
 12. Texas Family Code §101.003
 13. Texas Family Code §32.001
 14. Texas Family Code §32.003
 15. Texas Health & Safety Code § 773.008 Consent for emergency care of an individual is not required if
 1. the individual is: (A) unable to communicate because of an injury, accident, or illness or is unconscious; and (B) suffering from what reasonably appears to be a life-threatening injury or illness;
 2. a court of record orders the treatment of an individual who is in an imminent emergency to prevent the individual's serious bodily injury or loss of life; or
 3. the individual is a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parents, managing or possessory conservator, or guardian is not present.
 16. Texas Transportation Code § 724.011 et seq.
 17. Texas Health & Safety Code §81.050 & §81.107 Sec. 81.095.
 - (a) In a case of accidental exposure of a health care worker to blood or other body fluids of a patient in a licensed hospital, the hospital, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C.
 - (b) This subsection applies only in a case of accidental exposure of certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C if the report shows there is significant risk to the person exposed. The organization that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. The hospital shall provide the test results to the department or to the local health authority, which are responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the patient regarding the test results.
 - (c) A test conducted under this section may be performed without the patient's specific consent.
 18. Texas Family Code § 261.001

RELATED FORMS:

The following forms can be found on the Medical Records Intranet homepage under “Forms.”

List A, Texas Medical Disclosure Panel

List B, Texas Medical Disclosure Panel

DISCLOSURE AND CONSENT FOR HYSTERECTOMY (BCHD FORM 179-HYS-A ENGLISH VERSION AND BCHD FORM 179-HYS-B SPANISH VERSION)

CONSENT FORM FOR PHOTOS, INTERVIEWS, AUDIO AND VIDEO (BHCD #7-349-F NS 11/00)

USE: Consent form for the patient’s pre-approval of photographs, interviews and audio and video recordings done by the media and/or a legal representative of patient at all University Health System facilities

INFORMED CONSENT TO REFUSE (AMA) (BCHD FORM # 185 NS)