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Consent to Treatment Policy

1. Purpose

This policy outlines the consent requirements for patients who require an invasive procedure or treatment in accordance with the directives in the WA Health Consent to Treatment Policy MP 0175/22.

This policy should be read in conjunction with the WA Health Consent to Treatment Procedure.

2. Policy

This policy applies to all health practitioners that provide treatment on behalf of the WA Country Health Service (WACHS), and those who admit patients to a public hospital from their private rooms irrespective of whether the patient is to be admitted as a public or private patient.

This policy does not cover consent relating to matters other than treatment including:

- Financial consent
- Collecting or disclosing information
- Photography or filming
- Clinical trials or medical research
- Intimate procedures and examinations including the chaperone requirements
- Restrictive practices.

2.1 Principles

The following principles guide consent to treatment:

- patients have the right of autonomy or self-determination
- provision of treatment without consent exposes health practitioners to risks of legal claims including trespass to the person (assault and battery) and/or negligence (failure to inform), except in cases where the law permits or requires treatment without consent.
- informed consent must be valid (Consent to Treatment Policy MP 0175/22 section 3.2).

Equity and cultural safety considerations:

- Cultural differences in concepts of health and healing, communication, and language can play a part in forming barriers to gaining informed consent for Aboriginal peoples and people from culturally and linguistically diverse (CaLD) backgrounds.
- Consider personal biases, cultural and social factors and communication barriers when completing an informed consent discussion with the patient.
- Recognise that a history of trauma may affect behaviour and provide trauma-aware and healing-informed care.

- Ensure the provision of relevant and comprehensive information regarding the proposed treatment to the patient is appropriate in terms of the patient's language and communication needs, health literacy, and culture. Consider the following resources:
  - Engaging local Aboriginal Health Workers
  - Decision making tree for engaging an interpreter
  - Procedure Specific Information Sheets (PSIS) – includes access to easy-read and large print resources, and selected translations.

2.2 Documentation

Written documentation of consent discussions is not required for situations where consent is implied. Implied consent may apply where a patient indicates through their actions, they are willing to proceed with an aspect of their treatment e.g., a patient holds out their arm to allow blood to be taken. Implied consent may apply where significant risks to the patient are not anticipated. If there is doubt whether the patient's actions imply consent, explicit consent must be sought.

Explicit consent (which is also referred to as 'express consent') must be sought where:
- it is unclear if the patient's actions imply consent
- the proposed treatment is more complex and/or poses **material risks** to the patient, i.e., risks to which the patient may attach significance when making a decision to proceed or not.

Explicit consent must at a minimum be obtained for the following:
- Any surgical, medical, radiology, endoscopy, obstetric, oncology, dental, and mental health procedure/treatment requiring general anaesthesia, major regional anaesthesia (epidural, spinal, axillary block) or intravenous sedation (including palliative sedation[4]).
- In the case of surgical procedures, explicit consent does not imply anaesthetic consent unless it is administered by the operating surgeon (i.e., local anaesthetic). An anaesthetist must seek consent for the anaesthetic they are proposing to administer.
- Invasive treatments, where there are known significant risks or complications
- Administration of blood and blood products
- Commencement of medicines with known high-risk complications including clozapine, mifepristone, thalidomide, lenalidomide and pomalidomide
- Commencement of medicines under the Special Access Scheme; or for investigational purposes
- Therapeutic Goods Administration off-label use of therapeutic devices and/or medicines – If prescribing medicines for off label use, then the principles of the Council of Australian Therapeutic Advisory Groups Guiding Principles for the Quality Use of Off-label Medicine[3] should be followed.

Where explicit consent is required, the health practitioner must document consent either in a WACHS approved consent form or the patient's healthcare record (where a consent form is not available). The information documented must include:
- details of the benefits and material risks specific to that patient and any relevant alternatives
- key points and clear outcomes (including whether consent is provided, declined, or withdrawn) from discussions with the patient that are relevant to their decision to proceed with treatment
- a record of patient queries and health practitioner responses.

Where telehealth has been used for consent discussions, the consent process must still occur in full. The health practitioner that undertook the consent discussion must annotate the consent form on behalf of the patient, noting that the discussion occurred via Telehealth. This consent must be confirmed with the patient's own signature (or that of their substitute decision maker) prior to treatment commencing.

Student Health Practitioners

The presence of a patient in a teaching environment does not imply they consent to being examined or receiving health care from a trainee or student health practitioner. WACHS practitioners must ensure patients have sufficient information to make an informed decision and give valid consent for student health practitioner involvement in their treatment.

Consent discussions for student health practitioner involvement in treatment must be documented in the patients' healthcare record, or on WACHS consent forms where one is available.

Consent for a course of treatment

Where a course of treatment (e.g. chemotherapy) is required a single consent to treatment form may be completed. The consent to treatment form must specify that it is for the entire course of treatment. The health practitioner is to document the following information on the approved WACHS consent form:

- the elements of the course of treatment and any associated material risk
- any alternative treatments available
- the consequences of withdrawal at a future date.

2.3 Assessing capacity

A patient's capacity must be assessed in relation to a specific treatment decision prior to seeking the patient's consent to that treatment. An adult patient has capacity to give consent if they can understand the nature, consequences, and risks of the proposed treatment. Their capacity is assumed unless there is reason to believe it is lacking.

Children are assumed not to have capacity for consent. Where possible, children should be supported to participate in discussions and decision-making about their treatment, even where they do not have the capacity to make final decisions. Generally, as a child gets older, their intellectual and emotional maturity and competence to understand information relevant to a proposed treatment increase. Older children should be assessed to determine if they have the capacity, as a "Mature Minor" to make a decision about the proposed treatment. There is no specific age at which a child becomes a 'Mature Minor'. An assessment of a child as a 'Mature Minor' must be made in the context of the proposed treatment, that is, maturity in relation to one treatment decision does not necessarily equate to maturity for all treatment decisions.

Refer to the following documents for supporting information:

- WA Health Consent to Treatment Procedure (section 3.2)
- Consent to Treatment Clinical Decision Support Tool
- WA Hierarchy of Treatment Decision Makers Capacity Australia: A guide for Health Care Professional in WA.

2.4 Treatment in an Emergency

Treatment can only be provided without consent where necessary to save a person's life, prevent serious injury to the person's health or prevent the patient from suffering severe pain or distress in circumstances where:

- the patient is incapable of giving consent
- the patient does not have an Advance Health Directive applicable and available
- it is not practical to determine whether the patient has a substitute decision maker who can be readily identified and immediately available.

Treatment without consent must be:

- reasonably required to meet the emergency
- in the patient's best interests
- the least restrictive of the patient's future choices.

The rationale for treatment without consent must be clearly documented in the patient's healthcare record. The healthcare record must state details of attempts made to contact the substitute decision maker.

For information regarding consent for emergency psychiatric treatment – refer to WACHS Consent to Treatment - Tool 1: Emergency Psychiatric Treatment.

3. Roles and Responsibilities

The **health practitioner** must (within their scope of practice)[2] assist the patient to make an informed decision regarding consent by:

- explaining the proposed treatment (including treatment and recovery period), the potential benefits, complications, material risks as relevant to the patient's particular situation and the possibility the treatment may be unsuccessful
- informing the patient of alternative treatment options and the option to seek a second opinion
- ensuring the provision of relevant and comprehensive information regarding the proposed treatment to the patient is appropriate in terms of the patient's language and communication needs, health literacy, and culture
- providing patients the opportunity to ask questions and be heard and afforded the time and support to understand the information presented before making a decision.

Refer to the WA Health Consent to Treatment Procedure (section 3.3).

When there is a person responsible for providing consent on behalf of a patient, they must be provided the same information as would have been given to the patient if they had the capacity to make the treatment decision.

All staff are required to work within policies and guidelines to make sure that WACHS is a safe, equitable and positive place to be.

4. Monitoring and Evaluation

4.1 Monitoring

The WACHS Safety and Quality Executive Committee is responsible for monitoring and evaluating the effectiveness of this policy across all WACHS sites and services.

Monitoring activities will include:
- accreditation assessment reports
- clinical incident data review
- consumer feedback
- PSIS usage reports
- compliance audit (twice a year) as reflected within the WACHS Audit and Reporting Framework.

All WACHS regions are responsible for monitoring local data related to consent to treatment and implementing actions in response to identified risks and issues via local clinical governance processes.

4.2 Evaluation

Executive Director Clinical Excellence is responsible for ensuring that this policy and any supporting documents are reviewed at a minimum every five years.

5. Compliance

This policy is mandated by the WA Health Consent to Treatment Policy MP0175/22.

6. References

1. Australian Commission on Safety and Quality in Health Care. National Safety and Quality Health Service Standards. 2nd ed. – version 2. Sydney: ACSQHC; 2021

2. Coombes, Julieann; Bennett-Brook, Keziah; Hunter, Kate; Mackean, Tamara; Litton, Edward; Affandi, Jacquita S.; Ryder, Courtney; Porykali, Bobby; Grant, Brea; Yakubu, Kenneth; Garlett, Colin; and Kairuz Santos, Camila A. (2023) "Exploring the Experiences of the Consent Process for Aboriginal and Torres Strait Islander People Having Cardiac Surgery and Participating in Medical Research: A Study Protocol," Journal of the Australian Indigenous HealthInfoNet: Vol. 4 : Iss. 2 , Article 7. [Cited 27 October 2023]

3. Council of Australian Therapeutic Advisory Groups. Rethinking medicines decision-making in Australian hospitals: Guiding principles for the quality use of off-label medicines. Darlinghurst, NSW: CATAG, 2013. [Cited 27 October 2023]

4. Government of Western Australia. Statewide guidance for the safe, effective, and ethical use of palliative sedation. Perth WA: Department of Health; 2021 [Cited 05 July 2023].

7. Definitions

Term	Definition
Capacity	A person has capacity if they can understand the nature, purpose, and consequences of the proposed treatment. Capacity must always be assessed in the context of the decision that is to be made. The *Mental Health Act 2014* (WA) (s15) defines a person as having capacity when they: • understand any information or advice about the • decision that is required • understand the matters involved in the decision • understand the effect of the decision • weigh up the above factors for the purpose of making the treatment decision • communicate the decision in some way.
Child (Children)	A person aged under 18 years (*Age of Majority Act 1972*)
Consent (to medical treatment)	In the context of health care, consent is a patient's agreement that a health practitioner can proceed to perform a specific proposed treatment.
Health Practitioner	A person registered under the *Health Practitioner Regulation National Law (WA) 2010* in the health professions listed therein.
Treatment	Any medical, surgical (including a life-sustaining measure or palliative care), dental treatment or other health care.

8. Document Summary

Coverage	WACHS wide
Audience	All health practitioners that provide treatment and those who admit patients to a WACHS hospital/facility from their private rooms
Records Management	Health Record Management Policy
Related Legislation	*Family Law Act 1975* (Commonwealth) *Children and Community Services Act 2004* (WA) *Civil Liability Act 2002* (WA) *Criminal Code* (WA) *Electronic Transactions Act 2011* (WA) *Guardianship and Administration Act 1990* (WA) *Health Practitioner Regulation National Law (WA) 2010* *Human Tissue and Transplant Act 1982* (WA) *Mental Health Act 2014* (WA)
Related Mandatory Policies / Frameworks	• MP 0175/22 - Consent to Treatment Policy • Consent to Treatment Procedure • Clinical Governance, Safety and Quality Framework
Related WACHS Policy Documents	• Chaperone Policy • Clinical Image Photography and Videography Policy • Photography and Filming of Clinical Care by Patients, Carers, Relatives, Visitors or Contractors Policy
Other Related Documents	• Capacity Australia: A guide for Health Care Professional in WA • Decision making tree for engaging an interpreter • Procedure Specific Information Sheets (PSIS) • WA Hierarchy of Treatment Decision Makers • WA Clinician Consent to Treatment Flowchart • WACHS Consent to Treatment Tool 1: Consent and Emergency Psychiatric Treatment
Related Forms	• MR30A Patient Consent to Treatment or Investigation • MR30B Consent for a Minor Requiring Parental-Guardian Approval for Treatment or Investigation • MR30C Adults Unable to Consent to Treatment or Investigation • MR30D Patient Consent to Anaesthesia - General or Regional • MR30E Patient Consent to Electroconvulsive Treatment (Form E) – WACHS Great Southern • MR30G WACHS Consent to Blood Products • MR30H WACHS Release of Liability - Refusal of Blood Products • MR30M WACHS Consent for Induction of Labour • MR30P WACHS Patient Consent to Clozapine Form • MR30W Consent for Water Immersion During Labour and / or Birth (under development) • MR30.7 Newborn Hearing Screen (WAHPR)

	• MR30.9 / MR216 Information and Consent for Newborn Care (WAHPR - Vitamin K, Birth Hepatitis B Immunisation and Newborn Blood Spot Screening) • MR59A WACHS Cancer Services - Consent to Cancer Treatment • MR70B WACHS Rh D Immunoglobulin (Anti D) Record • MR173C WACHS Intravenous Iron Consent and Prescription Form
Related Training Packages	Nil
Aboriginal Health Impact Statement Declaration (ISD)	ISD Record ID: 3045
National Safety and Quality Health Service (NSQHS) Standards	2.04, 2.05
Aged Care Quality Standards	Standard 1. Consumer dignity and choice Standard 2. Ongoing assessment and planning with consumers
Chief Psychiatrist's Standards for Clinical Care	Standard: Consumer and Carer Involvement in Individual Care Standard: Physical Health care of Mental Health Consumers

9. Document Control

Version	Published date	Current from	Summary of changes
1.00	28 May 2024	28 May 2024	New Policy

10. Approval

Policy Owner	Executive Director Clinical Excellence
Co-approver	Executive Director Medical Services
Contact	Director Safety and Quality
Business Unit	Clinical Excellence and Medical Services
EDRMS #	ED-CO-24-81075

This document can be made available in alternative formats on request.