

2. Executive Summary

2.1. Overview

This is the first edition of the NSW Health *Consent to Medical and Healthcare Treatment Manual (Consent Manual)* and replaces the NSW Health Policy Directive *Consent to Medical Treatment, Patient Information PD2005_406*.

The Consent Manual provides operational guidance and procedures to support compliance with the NSW law on obtaining consent to medical treatment from patients or their substitute consent providers.

The Consent Manual incorporates changes in legislation and NSW Health policy which impact on the legal obligations for obtaining consent to medical treatment, including:

- changes to the *Mental Health Act 2007*, including the removal of the concept of 'Primary Carers' and the introduction of 'Designated Carers' and 'Principal Care Providers'
- changes to the *Health Records and Information Privacy Act 2002* (NSW) regarding the disclosure of genetic information to affected relatives
- clarification that Mature Minors can consent to or refuse their own treatment, and the circumstances where these decisions can be overridden
- guidance for Health Practitioners when patients refuse recommended medical treatment in an obstetric setting
- guidance for Health Practitioners when patients or their parents/guardians seek discharge against medical advice.

Consultation on the Consent Manual has extended to:

- Local Health Districts, Specialty Networks and other health organisations comprising NSW Health
- other relevant agencies including Department of Communities and Justice and the NSW Civil and Administrative Tribunal
- other relevant stakeholders including medical defence organisations, health professional registration bodies and Colleges
- consumer organisations.

The Consent Manual has been developed to achieve the following outcomes:

- assist Health Practitioners and managers in understanding the legal requirements for providing appropriate and adequate information to patients, including material risks of specific treatments, procedures and obtaining valid patient consent for such treatment / procedures to help them in discharging their legal obligations
- alert Health Practitioners and managers to their legal obligations with regard to providing treatment to patients who do not have capacity to consent.
- patient consent or refusal of treatment is recorded and documented appropriately
- patient autonomy and decision making is respected and patients are provided with appropriate information relevant to their treatment.

The Consent Manual contains a number of example scenarios, based on real incidents, in the blue boxes. The Consent Tables – Quick Finders in section 11 of this Consent Manual provide a useful for a summary of the relevant consent requirements.

2.2. Principles informing this policy

The Consent Manual has been formulated using the following fundamental principles:

- Adults with capacity have a right to decide what happens to their own bodies. This means that, in general, treatment cannot be provided without consent
- Adults with capacity have the right to refuse treatment, for any reason, even if refusal of treatment is likely to lead to serious injury or death
- Health Practitioners should assume that adult patients have capacity to consent unless there is evidence to contradict this assumption
- Patients (including adults, young people and children) must be provided with enough information about their condition, treatment options and prognosis in order to enable them to make or contribute to decision relating to their health care and promote supported decision making
- Information provided to patients needs to be tailored to the individual's needs and circumstances, including that individual's Health Literacy level
- Consent processes promote patient centred care that is respectful of, and responsive to, individual patients' preferences, needs and values and ensures that the patient's values guide all clinical decisions
- Consent processes promote cultural responsiveness in health services thereby improving the capacity to respond to the healthcare needs of culturally and linguistically diverse communities.
- Subject to accepted legal and ethical standards of medical care, patients without the capacity to consent have a right to a substitute decision maker and to be provided with care consistent with any valid ACD that they have made.

2.3. Quick reference guide to the structure of the Consent Manual

| Aspect of Consent | Go to section |
|---|----------------------------|
| Why it is necessary to obtain consent and warn patients about material risks | Section 4.1 |
| What are the requirements for obtaining a valid consent | Section 4.3 |
| Emergency treatment | Section 4.2.1 |
| How do I properly inform a patient about a procedure and warn of material risks? | Section 4.8 |
| Who should obtain consent? | Section 5 |
| Can a patient refuse treatment? | Section 6.1 |
| Refusal of treatment using an Advance Care Directive | Section 6.2 |
| Patients (16 years or over who do not have capacity to consent) | Section 7 |
| Consent to medical treatment for Minors including non-emergency treatment and sexual health treatment | Section 8 |
| Requirements for consent Treatment lawfully authorised or required | Section 4 Section 4.2.2 |
| Useful Contacts | Section 12 |
| Consent for patients being treated under the <i>Mental Health Act 2007</i> | Section 9 |
| Types of treatment under the Guardianship Act and consent requirements | Section 7.7 |
| What are the legal requirements for Special Medical Treatment in relation to children? | Section 8.11 |
| NSW Health State Forms relating to consent | Section 3.6 |

If you have any feedback on the Consent Manual, it should be sent to:

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