



Informed Consent Frequently Asked Questions (FAQ)

What is an informed consent?

The patient (or person deemed to have the authority to consent) discusses the treatment or surgery with a physician. This is the responsibility of the physician performing the procedure. It must include the proposed surgery and the risks, benefits, consequences and alternatives, including that of no treatment.

Who may obtain the written consent?

This is the responsibility of the physician while the patient is in the physician's office. If it is not obtained there, the name of the procedure as supplied by the physician in an order may be transcribed onto the Kaleida Health consent form by a resident, nurse or clerical staff. The patient (or their representative) may then sign the form.

Who may sign the consent when a patient lacks capacity?

Patients with capacity (as defined in [LE.9](#)) may sign on their own behalf. If it has been determined that a patient lacks capacity, a representative is identified and may sign the consent on behalf of the patient after having the informed consent discussion with the physician. A health care proxy, guardian, or a surrogate chosen from the list under the Family Health Care Decisions Act may stand in for the patient in the consent process.

Are there any exceptions to designating a representative?

Patients who are transferred from a mental hygiene facility OR have a diagnosis of mental retardation/developmental disability have special regulations and protections regarding decision-making authority. Risk Management should be contacted with any questions regarding consent involving these patients.

What if a patient objects to a capacity determination?

The patient's decision prevails unless a court makes a determination, or the court authorizes the treatment or another legal basis exists to override the patient's decision. Risk Management must become involved in situations such as this.

What if a patient refuses medically necessary treatment?

Adult patients with capacity or their representative may refuse or limit treatment. Additional efforts must be made to inform the patient of the type of treatment, the need for it and the consequences of refusal. See policy for directions on proper documentation. In the case of minors, or under certain other circumstances, contact Risk Management to determine if an ethics review is necessary or consideration of obtaining a court order.

What if a patient lacks capacity and a representative cannot be located for informed consent?

The attending physician may proceed with treatment once the patient's wishes and preferences are ascertained (if possible). The attending physician makes the recommendation for treatment in consultation with hospital staff responsible for the patient's care, and a second physician makes an independent determination concurring with the attending and is documented on the appropriate form (FHCD #5).

What procedure is followed when the patient is a minor?

If the minor is unemancipated, the consent of a parent or guardian is required. The consent of one parent is legally sufficient, however, if there are two parents the consent of both is preferable. If consent is being obtained from someone other than the biological parents, written documentation to evidence his/her legal authority to consent on behalf of the minor must be obtained, reviewed and a copy placed in the patient's medical record.

Are there any exceptions to the procedure for minors?

Yes, the unemancipated minor may consent to treatment for STDs, pregnancy determination, prenatal care, drug abuse and alcoholism treatment.

Is it okay to obtain consent over the phone?

Yes, telephone consent is acceptable if the person giving the consent on behalf of the patient is not physically present and unable to provide written consent. The physician's conversation with the consenting party must be witnessed by a member of the hospital staff and documented by the physician and witnessed in the medical record.

What is done when there is an emergency situation with no time to obtain the consent?

If it is not possible to obtain informed consent, whatever treatment is necessary to address the emergency situation may be performed. The treatment may not exceed that which is necessary to address the emergency situation. This must be documented in the medical record by the physician. A second medical opinion should be obtained when practicable and documented in the record.

How long is consent valid?

The consent is valid for the duration of a single admission except in cases where there is a significant change in the patient's condition or mental status.

What should be done when there is a physician partnership?

If possible, the physician performing the procedure should be designated on the consent form. If either physician may perform the procedure, both physicians must be listed. Corporate titles should not be used.

Who may witness a consent form?

Any available hospital personnel may witness a consent. If an interpreter is utilized, the interpreter should also sign the consent form.

When should Risk Management be contacted?

Contact Risk Management with questions about the application of the directives in the policy [LE.9](#); questions about the determination of the ability of an individual to act; requests for court intervention; and questions about patients involved with mental hygiene or with a diagnosis of mental retardation or developmental disability.