CLINICAL PROCEDURE:

Consent to Medical Treatment

DOCUMENT MANAGEMENT	
Document Number	cp2019_045
Summary	To provide guidance to health professionals with obtaining valid consent for medical treatments from consumers including the use of the WCHN forms and dispute resolution processes.
Applies to:	WCHN
Exceptions	nil
Replaces	Consent to Treatment and Related Medical Procedures for Minors PR2014_077
Lead Writer / Key Contact	Josephine Perry, Clinical Risk Manager, Safety and Quality Unit
Accountable Director / Oversight Committee	Executive Director Medical Services
Review Date	June 2023
Risk Rating	High
Key Words	Consent Treatment procedure medical practice risk minor blood transfusion invasive procedure Court Order ACD Advance Care Directive Decision Making Capacity
Status	Active

Compliance with WCHN Procedures is mandatory.

Document History

Version	Date	Writer	Amendment/s	Status
V3.1	18/9/19	J Perry	Minor update – Section 3.8	
v3.0	6/6/2019	SQU	Final endorsed	Active
v2.1	02/04/19	J Paholski/J Perry	scheduled review	
v2	13/02/15		Consent to Treatment and Related Medical Procedures for Minors	approved

INFORMAL COPY WHEN PRINTED

CORE CLINICAL PRACTICE REQUIREMENTS:

Positive patient identification
Consumers should be positively identified using three core identifiers:

- full name,
- date of birth,
- medical record number/address, prior to implementation of this procedure.

Staff completing positive patient identification should be mindful of collecting or confirming consumer identification information in a respectful, non-shaming way. Aboriginal people may have a number of names. For example, a person may have a European first name and surname, a skin name and maybe even a nickname. An individual gains a 'skin name' upon birth based on the skin names of his or her parents and skin names are used in a manner similar to a surname.

As a mark of respect, many Aboriginal people will avoid referring to a deceased person by name where the avoidance period may last anywhere from 12 months to several years. Those of the same name as the deceased are referred to by a substitute name during the avoidance period.

Identifying Aboriginal and Torres Strait Islander Status
The collection of the Aboriginal and Torres Strait Islander status of patients/consumers by WCHN is important for improving Aboriginal and Torres Strait Islander health. Under-identification of Aboriginal status has serious implications for Aboriginal health in two ways.

- Firstly, it prevents delivery of targeted services to Aboriginal and Torres Strait Islander people. If clinicians do not know which of their patients/consumers are Aboriginal, they are unable to offer them health interventions that are specific to Aboriginal people.
- Secondly, incomplete and unreliable data on Aboriginal and Torres Strait Islander health impede effective responses to the higher burden of disease and death among Aboriginal people, and make accurate assessment of progress in 'closing the gap' difficult.

See Identification of Patients / Clients prior to Delivery of Care/Service/Treatment for additional information.

Consumer Safety Risks
Consideration of any patient safety risks eg deterioration, infection status, fall, pressure injury or other safety risk (including social), must be considered in relation to this procedure.

For Aboriginal and Torres Strait Islander people, past policies and practices and have created unresolved trauma which has been passed down from generation to generation. Transgenerational trauma can manifest in many different ways and affect people differently. The social and health disadvantages experienced by Aboriginal and Torres Strait Islander people and the impact of unresolved trauma should be considered in relation to this procedure.

Person and Family Centred Care
WCHN staff operate in a framework of Person and Family Centred practice which involves; treating consumers and their family with dignity and respect, communicating information clearly and openly with the consumer, actively involving consumers in decision making and being positive and kind.

Diversity
WCHN will seek to ensure that this health service becomes more receptive and responsive to, and culturally safe for, Aboriginal and Torres Strait Islander people using their services and facilities in order to achieve equitable health outcomes. Aboriginal and Torres Strait Islander people should be recognised as having a special heritage and the WCHN will, in interacting with Aboriginal and Torres Strait Islander people, support values that respect their traditional and contemporary cultures.

WCHN services will be sensitive to the linguistic, physical, spiritual and cultural needs and requirements of consumers, and responsive as far as practicable to the particular circumstances of individuals and their families. Identification of linguistic, physical, spiritual and cultural needs is a responsibility of all staff.

Documentation
All aspects of care delivery must be documented in the health record, including documentation of discussions with the patient/care giver, in accordance with the WCHN Procedure: Documentation in Patient/Client Health Records.

MANAGER RESPONSIBILITIES:

Managers are responsible for:

- ensuring staff are aware of this procedure;
- have the skills and knowledge to undertake the actions described; and
- escalating any issues with the implementation of this procedure through the appropriate mechanism.

DETAILED STEPS, PROCEDURES AND ACTIONS:

The Women's and Children's Clinical Governance and Consumer Engagement Frameworks, together with the National Safety & Quality Standards and Legislation, serve as the foundational pillars on which the WCHN Clinical Communication system is built that enable the delivery of effective communications, accurate patient identification and documentation systems in collaboration with consumers and stakeholders.

This procedure must be read in conjunction with the SA Health Consent to Medical Treatment and Health Care Policy Guideline Policy Guideline (2015) and the SA Health Providing Medical Assessment and/or Treatment Where Patient Consent Cannot Be Obtained Policy Directive (2015).

This document does not replicate information contained in the above procedures but aims to supplement information with WCHN local processes.

INDEX

6. Disputes

The objects of the South Australian *Consent to Medical Treatment and Palliative Care Act 1995* (*Consent Act)* are:

a) To make certain reforms to the law relating to consent to medical treatment:
   i. To allow for person of or over the age of 16 years to decide freely for themselves on an informed basis whether or not to undergo medical treatment; and
   ii. To provide for the administration of emergency treatment in certain circumstances without consent; and

b) To provide for the medical treatment of people who have impaired decision-making capacity; and

c) To allow for the provision of palliative care, in accordance with proper standards, to people who are dying and to protect them from medical treatment that is intrusive, burdensome and futile.

Quick links:

Section 4 Consent for Medical Treatment for Consumer aged 16 years or older

Section 5 Consent for Medical Treatment for Consumers aged less than 16 years

1. Principles

Consistent with the SA Health Providing Medical Assessment and/or Treatment where Patient Consent Cannot be Obtained Policy Directive, the principles of this procedure are:

- A consumer (of or over the age of 16 years) with decision making capacity has the legal and ethical right to make their own decisions about medical treatment options, including the refusal of medical assessment or treatment,
- All consumers should have their dignity respected.
- If it is deemed that a consumer has impaired decision-making capacity, it is desirable that they are supported to make their own decisions to the extent they are able.
- A consumer who is deemed to have impaired decision making capacity cannot give or withhold consent:
  - A provision in an Advance Care Directive (constituting consent) can be included which delegates a Substitute Decision-Maker (including a SACAT appointed guardian).
  - In the absence of an Advance Care Directive, a person responsible can consent to the medical assessment and/or treatment for the consumer, including refusing treatment.

2. General requirements

The Consent Act requires that medical practitioners explain to the patient or the patient's representative wherever practical and reasonable:

- The nature, consequence and risks of the proposed medical treatment; and
- The likely consequences of not proceeding with the treatment; and
- Any alternative medical treatment or courses of action that might reasonably be considered in the circumstances of a particular case.

2.1 Culture and language

Cultural influences and language differences can play a significant role in determining if consent has been obtained, and a person is unable to provide informed consent if they do not understand what they are consenting to.

Language barriers for Aboriginal and Torres Strait Islander people may result in requests for consent being misinterpreted. It is therefore recommended that, where possible, the assistance of an Aboriginal Liaison Officer be sought when obtaining consent. The contact number for the Women's and Children's Hospital Aboriginal Liaison Unit is 8303 1698. A table of the Aboriginal Workforce in the WCHN who can help can be found on the Aboriginal Health Division WCHN intranet page.

If it is not possible to contact the Aboriginal Liaison Unit staff and there is concern about the consent process or the validity of the consent and the procedure is deemed to an emergency, Section 4.3 (over 16 years) or Section 5.4 (under 16 years) should be followed.

If it is not possible to contact the Aboriginal Liaison Unit staff and there is concern about the consent process or the validity of the consent and it is not an emergency:

- Contact the person's community to identify a Person Responsible to provide consent; or
- Defer the procedure (if it is safe to do so) until the next business day to seek the advice of the Aboriginal Liaison Unit staff.

If a person is unable to communicate adequately in English, the services of a professional interpreter should be offered at the time of:

- The diagnosis of the person's condition, the explanation of any proposed medical treatments and signing of the consent for ; and
- Admission and taking of a person's details; and
- When specific post-operative advice is given, including at the time of discharge.

Refer to the WCHN Corporate Procedure: Interpreting and Translation Services Access and Use

If the services of Aboriginal Liaison Unit or other Interpreting and Translation Services are accessed, this should be clearly detailed in the medical record.

3. Obtaining Consent

A medical practitioner who performs a medical treatment has the legal responsibility for ensuring that a consumer is properly informed and that a valid consent is given. If the responsibility for obtaining consent is delegated to another medical practitioner or health practitioner, the primary medical practitioner must ensure that the other medical or health practitioner to whom the responsibility is delegated understands both the consent process and the medical treatment proposed, including the risk and benefits of the proposed treatment, the alternative treatments and the consequences of not proceeding with the treatment.

3.1 Valid consent

A **valid consent** is:

- **Informed** – the consumer must be aware of the proposed treatment, the risks associated with the treatment, any other treatment options, and the likely outcome of not having any treatment.
- **Voluntary** – the decision to consent or not to consent must be freely given and not as a result of coercion.
- **Clear** - The consumer must be expressly or implicitly be consenting to all aspects of treatment.
- The consumer must have **decision making capacity** – the person must be capable of giving consent.

A person has decision-making capacity, in relation to a specific decision if they can:

- Understand the information about the decision; and
- Understand and appreciate the risks and benefits of the choices; and
- Remember that information for a short time; and
- Tell someone what the decision is.

Adults (for the purposes of the Consent Act, of or over 16) are considered to have decision making capacity about their own medical treatment unless there is significant evidence to suggest otherwise following initial assessment.

Some children (under 16) will be assessed as having capacity, but it is not an assumption.

If the medical practitioner obtaining consent is concerned about the person's decision making capacity, guidance is provided on the SA Health Impaired Decision-Making Factsheet . These processes are detailed in the SA Health Providing Medical Assessment And/Or Treatment Where Patient Consent Cannot Be Obtained Policy Directive (2015). Further information can also be found on the SA Health Supported decision-making Factsheet .

A person's decision making capacity may fluctuate. Examples of impaired decision making capacity include the person being comatose or otherwise unconscious, having end stage dementia, or being under the influence of drugs and alcohol.

A person is not to be taken to be incapable of understanding or retaining information merely because a decision made by the person results or may result in an adverse outcome for the person.

Note assessing the decision making capacity of a Child (under the age of 16 years) is discussed in section 5.

3.2 Type of Consent
Written consent must be obtained for all treatments that are of a serious nature or have inherent risks or complications and any procedures requiring anaesthetic.

Medical treatments that are considered sensitive (e.g. breast, vaginal, genital or rectal examinations, taking of photographs, videos or audio recordings for inclusion in publications and educational material) should have written consent and may require that another health practitioner is present; this should also be noted in the consumer's medical record.

When verbal consent for a treatment or assessment is obtained this must be documented in the consumer's medical record.

Consent may be withdrawn at any time. A change in the consumer's consent should be recorded on the Consent to medical treatment form previously completed.

(for further information refer to the SA Health Consent to Medical Treatment and Health Care Policy Guideline Policy Guideline (2015)

3.3 Duration of Consent

If consent has been obtained some time prior the procedure or administration of the treatment, it will remain valid providing that the delay between a person giving consent and the treatment being provided has not lead to a change in the person's personal circumstances or the nature of the of treatment of the treatment being administered, such as to affect the original consent.

The consent form is considered valid for 12 months if the patient is able to recall the comprehensive process of informed consent and the information provided AND there has been no significant change in health status/nature of intended treatment.

If the Medical Practitioner is unsure how much information the patient has retained, or new information becomes available regarding the proposed intervention for example new available technology or new treatments that have been developed since the consent was given, then consent must be obtained prior to performing the intended treatment.

If 12 months have passed since the previous consent form has been signed, then a new consent form must be signed.

A patient may withdraw consent at any time.

3.4 Consent for a course of treatment
A person can give consent for a course of treatment and that consent will remain valid for 12 months providing that:

- There has not been an inordinate interruption or delay to the course of the treatment; or
- There has not been a change in the person's circumstances such as to affect the original consent; or
- There is not a change in the treatment provided that has not been explained to the person; and
- There is no reason to think the person has revoked or intended to revoke the original consent.

3.5 Documentation of Consent
The medical practitioner must explain to the consumer [or their patient's representative] wherever practical and reasonable:

- The nature, consequence and risks of the proposed medical treatment; and
- The likely consequences of not proceeding with the treatment; and
- Any alternative medical treatment or courses of action that might reasonably be considered in the circumstances of a particular case.

At a minimum, this information must be documented. Where written consent is required one of the approved WCHN/SA Health Consent to Medical Treatment form must be fully completed and additional information as required (e.g. assessment of decision making capacity, detailed descriptions of the procedure or alternative treatment, questions raised by the consumer in relation to the procedure) should be documented in the medical record.

The WCHN Guide to Consent to Medical Treatment Forms Factsheet [link] provides advice on which form to use in which circumstance.

3.6 Consent for administration of blood and blood products
Written consent should be obtained from the administration of blood or blood products wherever possible, using either the:

- Consent for Blood Transfusion/Blood product Administration (MR82BT) ; or
- Consent for Blood Transfusion/Blood Product Administration – by a Third Party (draft)

Refusal of blood or blood product administration must be documented on the Acknowledgement of Medical Advice form (MR82C).

For additional information on the care of persons who are Jehovah Witnesses please refer to the SA Health Consent to Medical Treatment and Health Care Policy Guideline Policy Guideline (2015)

3.7 Prescribed treatment
Under the *Guardianship and Administration Act 1993* a medical practitioner must not give prescribed treatment (prescribed treatments are termination of pregnancy and sterilization) to a person who has a mental incapacity (including a child with a mental incapacity) as defined in the *Guardianship and Administration Act 1993* without the consent of the South Australian Civil and Administrative Tribunal (SACAT) , except when it is necessary for emergency medical treatment under section 13 of the Consent Act.

3.8 Consent for Examination after an Assault
The PD184A form Medical Record for Sexual Assault Examination is permitted to be used in the case of forensic examination and documentation required after an assault.

4. Consent for Medical Treatment consumers aged 16 years or older

Guidance for obtaining consent from consumers aged 16 years or older is illustrated in the SA Health Flowchart Consent to Medical Treatment and Healthcare – Adults (appendix/or link)

In the majority of circumstances a person aged 16 years or older will provide consent for their medical treatment. In this case the Consent to Medical treatment (AD-38(w)) form must be used.

In the event that a consumer has decision making capacity and withholds consent to a recommended medical procedure or treatment, this procedure or treatment must not proceed. All discussions, including the risks and benefits of the proposed treatment, the consequences of not having treatment and the alternative treatments must be documented on the Acknowledgement of Medical Advice form (MR82C) and in the consumer's medical record.

See section 3.1 above for information on decision-making capacity in adults.

4.1 Advance Care Directives

Consumers aged 18 years or older may have an Advance Care Directive (ACD) in place. An Advance Care Directive is an overarching term used to describe legal documents that enable competent adults to:

- Appoint one or more Substitute Decision Makers to make decisions on the person's behalf when the person does not have capacity; and/or
- Write directions, wishes and values (provisions) regarding future health care, accommodation, residential or personal matters.

SA Health has a prescriptive policy for ACD formulation, please refer to SA Health 7 Step Pathway Factsheet

A provision of an Advance Care Directive comprising refusal of particular health care will be taken to be a binding provision.

Refer to the
SA Health Advance Care Directives Policy Directive
SA Health Advanced Care Directives and Mental Health Treatment Orders Factsheet
SA Health Supported decision-making Factsheet
SA Health - 7 Step Pathway Policy

WCHN Corporate Procedure: Advance Care Directive – Administrative Management of
WCHN Clinical Procedure: Advance Care Directive- WCHN

Clinicians should make reasonable inquries to ascertain whether the patient has given an ACD.
As per the WCHN Corporate Procedure: Advance Care Directive – Administrative Management of Clinicians can identify if an ACD is in place by:

- A flag in HOMER,
- Notation the Alert MR-1 form in the medical record
- A certified copy of the ACD in the Medical Record

4.2 Consent by a third party

In the event that a consumer is aged 16 years or older, is not able to consent for themselves and the decision cannot be deferred and it is not an emergency, the SA Health Consent to Medical Treatment and Healthcare – Adults Flow Chart (Appendix A) should be consulted, additional detail can be found in the SA Health Consent to Medical Treatment and Health Care Policy Guideline Policy Guideline (2015) and the SA Health Providing Medical Assessment And/Or Treatment Where Patient Consent Cannot Be Obtained Policy Directive (2015).

In these circumstances the Consent to Medical Treatment – by a Third Party (AD-38(x)) must be used. It is expected that the authority of the third person providing consent is identified on Section 1 (a) is completed.

4.3 Emergency Treatment

The Consent Act specifies the circumstances in which a medical practitioner can lawfully administer emergency medical treatment to a person in without the person's consent:

- the patient is incapable of consenting (whether or not the person has impaired decision making capacity in respect of a particular decision); and
- the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion is supported by the written opinion of another medical practitioner who has personally examined the patient; and
- the patient (if, of or over 16 years of age) has not, to the best of the medical practitioner's knowledge, refused to consent to the treatment; and
- the medical practitioner proposing to administer the treatment has made, or has caused to be made, reasonable inquiries to ascertain whether the patient (if the patient is 18 or more years of age) has given an Advance Care Directive (ACD).

If the patient has given an advance care directive; and

- the medical practitioner proposing to administer the treatment is aware of that fact (whether on the basis of inquiries made under this section or otherwise); and
- a substitute decision-maker appointed under the advance care directive is empowered or authorised to make decisions relating to the administration of such treatment and is reasonably available to make such a decision.

The medical treatment must not be administered without the consent of the substitute decision-maker.

Note—This provision simply requires the substitute decision-maker to be given the opportunity to make the decision about consent if he or she is available—there may also be other provisions of the advance care directive in relation to the treatment that are relevant, and need to be complied with, in the circumstances.

If no such substitute decision-maker is available and a guardian of the patient is available, the medical treatment may not be administered without the guardian's consent.

If neither a substitute decision-maker nor a guardian of the patient is available, but a person responsible for the patient (within the meaning of Part 2A) is reasonably available and willing to consent to the administration of the medical treatment, the medical treatment may not be administered without the consent of the person responsible for the patient (given in accordance with Part 2A).

If the patient is a child, and a parent or guardian of the child is available to decide whether the medical treatment should be administered, the parent's or guardian's consent to the treatment must be sought but the child's health and well-being are paramount and if the parent or guardian refuses consent, the treatment may be administered despite the refusal if it is in the best interests of the child's health and well-being.

Emergency treatment is treatment which is necessary to meet an imminent risk to like or health.

Refer to the above section for information on decision making capacity [Obtaining Consent].

Section 2 of the Consent to Medical Treatment – by a Third Party (AD-38(x)) must be used when emergency treatment without consent is provided, additional documentation (e.g. the efforts to contact a Substitute Decision maker or person responsible, locate an ACD etc).

See below for emergency treatment of minors (children under the age of 16 years).

4.4 Other

SA Health Consent to Medical Treatment and Health Care Policy Guideline Policy Guideline (2015) should be consulted for additional information on:

- Palliative care
- Mental incapacity and the Guardianship and Administration Act 1993

- Treatment of persons with mental illness
- Consent for Electro-convulsive therapy
- Consent for neurosurgery
- Care for persons who are Jehovah Witnesses
- The use of Restrictive practices when consent for treatment cannot be obtained.

5. Consent for Medical Treatment Consumers aged less than 16 years.

The Consent Act provides for medical treatment to be provided to children (under the age of 16 years) if:

a) The parent or guardian consents; or
b) The child consents and:
    i. The medical practitioner who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and the at the treatment is in the best interest of the child's health and well-being; and
    ii. That opinion is supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

Additional information on the application of this section of the Act is provided in the following sections

5.1 Consent by a third party (parent or guardian)

When consent for a child aged less than 16 years is provided by a third party the Consent to Medical Treatment – by a Third Party (AD-38(x)) form is to be completed, including the identification of the authority of the third party provide the consent.

Only one parent is required to provide consent, however if the medical practitioner becomes aware that there is disagreement between the parents, then steps to resolve this difference must be undertaken. This may include case conference, a second medical opinion, referral to the Divisional Director, referral to the Patient Care Ethics Committee. The child's best interest, health and well-being must be at the center of these discussions. Additional advice from the SA Health Legal and Legislative Policy Unit can be sought via the Clinical Risk Manager.

5.1.1 Obtaining Consent when Family Court orders are in place

Parents have joint responsibility for their children even if they separate or remarry, so either parent may continue to make medical and health care decisions about their child unless the authority of that parent has been varied by a court order.

It is the responsibility of the parents to inform health professionals of any court order and to provide a copy of the most recent court order. Once informed, it then becomes the health professional's responsibility to comply with the Order.

The Family Court uses the term "shared parental authority". Where there is an order for shared parental authority, decisions about issues that are major long term issues are to be made jointly. It is the responsibility of the parent seeking the treatment to consult with the other parent, where necessary and for both to come to a joint decision about the issue.

Whether the treatment/healthcare to be provided may be described as "long term care, welfare and development" or "a major long term issue" in relation to the child's health will depend on the facts and circumstances in each case. A course of counselling is likely to be considered a major long term issue, whereas one treatment for an injury is not. If there is dispute between the parents as to the meaning of an order, then the parents should ask the Family Court to adjudicate. Again, assistance can be sought via the Clinical Risk Manager.

5.1.2 Obtaining consent for children under the Guardianship of the Chief Executive

A child under the Guardianship of the Chief Executive (formerly known as "guardianship of the Minister") means a child that is covered by an order issued by the Youth Court that places the child under the Guardianship of the Chief Executive of the Department of Child Protection for a specific period of time. The Guardianship is managed on a day to day basis by the Department of Child Protection.

This does not change the age a person may consent to treatment or the child's ability to consent to treatment.

For children under the Guardianship of the Chief Executive, the Department of Child Protection has published a booklet called "Who can say OK? Making decisions about children in care", which provides guidance on who can provide consent for different categories of medical treatment. The table below, extracted from this booklet provides a quick summary of who can provide consent; please refer to the booklet for further explanation.

Treatment type	Who can say OK
Preliminary health check	DCP case worker, in collaboration with the carer
Day-today medical treatment Appointments, seeking assessment, investigation and treatment for minor ailments and injuries, purchasing and administering medication, immunisation	Carer
Routine medical conditions Commencing and continuing treatment	Carer
Hospital admission (non-emergency)	Carer
Mental health assessment/therapy	Carer/DCP case worker (at practitioner discretion)
Non-routine medical conditions involving significant physical, emotional or social impact Psychiatric treatment and intervention, administration of psychotrophic medication, CT scans, genetic testing	DCP case worker
Administration of general anaesthetic and medical surgical procedures	DCP written permission and consultation with the carer - DCP supervisor or above - After hours: DCP supervisor or above at the DCP call centre
Emergency	Medical practitioner

5.1.3 Telephone consent

While it is preferable for a parent or guardian to be present and sign the consent form, in the event that they are only available by telephone the medical practitioner must gain consent in the presence of a second clinician and the consent is repeated to a second clinician as a witness. The discussion must be documented in the medical record and signed by both clinicians, the Medical Treatment – by a Third Party (AD-38(x)) completed with a notation that the consent was obtained by telephone and signed by both clinicians.

Note: it is not necessary for the second clinician to be a medical officer as they are acting as a witness to the discussion and consent, not obtaining the consent.

5.1.4 In loco parentis and informal caregivers

It is almost always preferable to obtain consent from the parent or a legal guardian. However in some circumstances this is not possible (e.g. where a child is voluntarily living with another family).

In loco parentis means a person "in the position of a parent; having the same authority as a parent over a child" (Legal Services Commission of South Australia Law Handbook).

An adult acting *in loco parentis* may provide consent for a child in the event the parent/legal guardian is not available, and the decision cannot be deferred until the parent/legal guardian is available.

The Consent Act defines the "parent" of a child as including a step-parent and an adult who acts *in loco parentis* in relation to the child.

Informal caregiving arrangements are also encountered, including circumstances such as grandparents (or other adult related by blood or marriage or accordance with Aboriginal or Torres Strait Islander kinship rules) providing the day to day care and supervision of a child.

The clinician must satisfy themselves that the adult is in fact acting *in loco parentis* or as the informal caregiver. The SA Government has developed an Informal Relative Caregivers Statutory declarationand associated Frequently Asked Questions about the Informal Relative Caregivers Statutory Declaration. Additional information can also found on the Knowing your rights A Guide to the Rights of Older South Australians website.

It is not a legal requirement that these are completed however if the clinician requires additional assurance of the informal care giver status this tool can assist.

5.1.5 Parental/Guardian decision making capacity
The same principles of assessing decision making capacity apply for a parent or guardian consenting for a child as for a person consenting for themselves.

If there are doubts about both parents' or guardians' decision making capacity SA Health Impaired Decision-Making Factsheet will help to assess this, the processes are further detailed in the SA Health Providing Medical Assessment And/Or Treatment Where Patient Consent Cannot Be Obtained Policy Directive (2015). Further information can also be found on the SA Health Supported decision-making Factsheet .

If it is considered that the parent/guardian does not have decision making capacity, and this is considered to be temporary (for example drug and/or alcohol related), and the decision can be safely deferred then the decision should be deferred.

In an emergency situation, Under the Consent Act, medical treatment can be provided if the parent or guardian consents, or if the child consents and that is supported by the medical practitioners.

Emergency medical treatment should not be delayed see 5.4 Emergency Treatment.

The best interest of the child and their safety and wellbeing must be paramount.

- Any concerns about the parents' capacity should be recorded in the child's medical record.
- If there is ongoing concern about the parent/guardian's decision making capacity advice can be sought from the Divisional Director, the Patient Care Ethics Committee, the Child Protection Unit and or the Clinical Risk Manager.
- Legal advice is obtained via the Clinical Risk Manager.

The SA Health Child Harm – Medical Neglect or Fabricated or Induced Illness Policy Guideline also provides assistance to health care providers who are concerned about caregiver (parent/guardian) health care behaviour towards children.

5.1.6 Restrictive practices
The parent or guardian can also consent to the use of restrictive practices in order to administer the treatment. However, that authority does not extend to authorising the use of significant or extended restrictive practices to administer medical treatment to an unwilling mature child who is capable of understanding the risks of not having treatment. In these circumstances the Divisional Director should be notified, legal advice can be obtained via the Clinical Risk Manager, after hours the WCHN Executive on call must be notified.

5.2 A child (young person under the age of 16 years) providing consent for self

The Consent Act also allows for consumers under the age of 16 years to consent to their own medical treatment if:

1. The medical practitioner who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and the at the treatment in the best interest of the child's health and well-being; and
2. That opinion is supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

The medical practitioner must examine the child and be satisfied that they have the ability or maturity to understand the nature, consequences and risks of the proposed treatment. This opinion must be supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

The age at which a child is sufficiently mature to independently consent to treatment depends not only on the age and maturity of the child but also the complexity of the procedure, and needs to be assessed on a case by case basis.

There is no specific test for maturity or capacity to understand. The WCHN Fact Sheet Assessing the Capacity of a Minor (person under the age of 16 years) to Provide Consent for Medical Treatment [draft] may provide assistance.

The consent by a child does not negate the capacity of the child's parent or guardian to also provide consent and this should be sought where appropriate. However, the reason for the child wishing to consent must be considered when deciding whether to also seek consent from the parent or guardian.

The Consent to Medical treatment – by a child under the age of 16 years (minor) (AD-38(y)) must be completed with additional documentation in the medical record.

5.3 A child providing Consent for medical treatment for their baby
If the child has been assessed as having capacity to consent for medical treatment, they are able to consent for the medical treatment of their child. The tools in Section 3 may be of assistance.

In the event that there is some uncertainty as to whether the child is able to understand the nature, consequences and risks of the treatment proposed for their baby, they should be provided with all possible support to assist with their decision making. This could include ensuring the child has their own support people, including their own parents or guardians, with them to assist in coming to a decision.

The Consent to Medical Treatment – by a Third Party (AD-38(x)) must be completed with additional documentation in the medical record.

If this is not possible urgent liaison with the Department of Child Protection must occur.

5.4 Emergency treatment for children under the age of 16 years

In the case of emergency treatment, section 13(5) of the Consent Act states that if the parent or guardian of the child is available then consent must be sought.

If the parent or guardian refuses consent or is not available, but the treatment is deemed in the best interest of the child's health and wellbeing, then a medical practitioner may administer the treatment despite the refusal of the parent or guardian. The medical practitioner who administers the treatment must be of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion must be supported by the written opinion of at least one other medical practitioner who personally examines the child before treatment commences. The supporting opinion is not necessary if in the circumstances of the case it is not practicable to obtain such an opinion.

Section 2 of the Consent to Medical treatment – by a child under the age of 16 years (minor) (AD-38(y)) must be completed with additional documentation in the medical record.

If parental consent is overridden in an emergency situation, as soon as practical:

- The Executive Director, Medical or the Executive on call must be notified;
- The event must be logged on SLS
- The Clinical Risk Manager must be notified by the next working day.

Emergency treatment is treatment which is necessary to meet an imminent risk to like or health.

6. Disputes

In the event that there is a dispute about consent or an Advance Care Directive, this should be discussed with the Divisional Director and Professional Lead (i.e. the Executive Director Medical or Executive Director Nursing and Midwifery).

If the dispute cannot be resolved, it may be referred to the Patient Care Ethics Committee, Child Protections Services or if legal advice needs to be obtained to the Clinical Risk Management Office.

The Office of the Public Advocate is able to provide advice or mediate dispute onsite through a 24-hour service.

For additional information on dispute resolution please refer to the SA Health Consent to Medical Treatment and Health Care Policy Guideline Policy Guideline (2015) and the SA Health Providing Medical Assessment And/Or Treatment Where Patient Consent Cannot Be Obtained Policy Directive (2015)

RISK ASSESSMENT

CATEGORY	Clinical	Financial	Workforce	Legislative	Organisation	Reputation
Consequence	Major			Minor		
Likelihood	Possible			Possible		
Risk Rating	**High**			**moderate**		
Description						

Overall Risk rating:	High

COMPLIANCE EVALUATION

Compliance Measures
Annual Audit of completion of Consent Medical Treatment forms Annual Consent questionnaire to consumers Monitoring of consent to medical treatment related incidents reported through SLS Annual Surgical Safety Checklist in Surgical Services.

REFERENCING	
National Standard/s	
Definitions and Acronyms:	**Adult:** - a person over the age of 16 years under the Consent Act - a person over 18 years of age under the Advance Care Directives Act 2013 - a person over the age of 18 years if age under the Mental Health Act 2009 **Advance Care Directive (ACD):** an ACD is given under the Advanced Care Directives Act 2013. It is a legal form written by competent adults. It can record a person's wishes and instructions for future health care decisions, preferred living arrangements and other personal decisions. An ACD can also be used to appoint one or more adults to make these decisions for the person (a Substitute Decision Maker), An ACD takes effect if a person has impaired decision making capacity in relation to decisions. **Child (Minor):** - a person under the age of 16 years Consent Act - a person under 18 years of age Advance Care Directives Act 2013 - a person under 18 years of age Mental Health Act 2009 **Consent:** means agreement to a proposed medical ro dental or surgical treatment or health care, given after proper and sufficient explanation of the nature and likely consequences and risks of the treatment or not having the treatment. **Emergency medical treatment**: Under the Consent Act, emergency treatment is necessary to meet an imminent risk to life or health, Imminent risk of harm means likely to occur at any moment; impending which means that:

	- The hazard is clearly present or foreseeable - The harm would be sufficiently significant as to amount to a high risk of serious impairment of, or significant adverse effect on, the patient's future health. **Guardian:** Means a person appointed by the Guardianship Board (or the SACAT) as a guardian for a protected person under the Guardianship and Administration Act 1993. Guardianship of the Chief Executive **Medical Treatment:** Under the Consent Act means 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 or improving comfort and quality of life) and includes the prescription or supply of drugs and health care. **Mental Incapacity:** Is defined under the Guardianship and Administration Act 1993 as a person's inability to look after their health, safety or welfare or to manage their own affairs, as a result of: - Any damage to, or illness, disorder, imperfect or delayed development, impairment or deterioration of the brain or mind; - Any physical illness or condition that renders the person unable to communicate their intentions or wishes in any manner whatsoever. **Minor:** see Child **Parent, of a child**; under the Consent Act includes - A step –parent; and - An adult who acts on loco parentis in relation to the child. **Prescribed treatment:** Under the Guardianship and Administration Act 1993 means; - Termination of pregnancy - Sterilisation Under the Mental Health Act 2009 means - Electroconvulsive Therapy - psychosurgery **Representative**, of a patient/consumer: means a person authorised under this or any other Act or law to make decisions about the administration of medical treatment of the relevant kind to the patient. **SACAT:** South Australian Civil and Administrative Tribunal is a state tribunal that helps South Australians resolve issues within specific area of the law, either through agreement at a conference, conciliation or mediation, or through a decision of the Tribunal at hearing.
Legislation:	Consent to Medical treatment and Palliative Care Act 1995 Advance Care Directives Act 2013 Children's Protection Act 1993 Mental Health Act 2009

	Guardianship and Administration Act1993
SA Health:	SA Health: • Consent to Medical Treatment and Health Care Policy Guideline Policy Guideline • Providing Medical Assessment And/Or Treatment Where Patient Consent Cannot Be Obtained Policy Directive (2015) • Plain Language Guide mental Health Act 2009 • Advance Care Directive Act educational resources • Advanced Care Directives and Mental Health Treatment Orders Factsheet • Advance Care Directives Policy Directive • Impaired Decision-Making Factsheet • Supported decision-making Factsheet • Consent to Medical Treatment and Healthcare - Adults Flow Chart • Child Harm – Medical Neglect or Fabricated or Induced Illness Policy Guideline • Minimising Restrictive Practices in Health Care Policy
References:	Legal Services Commission of South Australia Law Handbook Office of the Public Advocate
Related Documents:	WCHN Guide to Consent to Medical Treatment Forms Fact-sheet [draft] WCHN Fact Sheet Assessing the Capacity of a Minor (person under the age of 16 years) to Provide Consent for Medical Treatment [draft] WCHN Procedures: • Advance Care Directive – Administrative Management of • Advance Care Directive- WCHN • Interpreting and Translation Services Access and Use • Transfusion of Blood Products Consent to Medical treatment (AD-38(w) Consent to Medical Treatment – by a Third Party (AD-38(x)) Consent to Medical treatment – by a child under the age of 16 years (minor) (AD-38(y)) Acknowledgement of Medical Advice form (MR82C) Consent for Blood Transfusion/Blood product Administration (MR82BT) Consent for Blood Transfusion/Blood Product Administration – by a Third Party (draft) "Who can say OK? Making decisions about children in care." Knowing your rights A Guide to the Rights of Older South Australians Informal Relative Caregivers Statutory declaration Frequently Asked Questions about the Informal Relative Caregivers Statutory Declaration Appendix A: Consent to Medical Treatment and Health Care – Adults Flow Chart Consent to Medical Treatment – condensed version of procedure
Consumer Health Information	

Appendix A: Consent to Medical Treatment and Health Care – Adults Flow Chart