OFFENDER CONSENT FOR HEALTH CARE

REVIEW/REVISION HISTORY:

Effective: 5/30/00
Revised: 5/31/04
Revised: 10/30/06
Revised: 11/3/08 AB 08-031
Revised: 3/24/09
Revised: 7/11/11
Revised: 2/10/14
Revised: 12/24/15

SUMMARY OF REVISION/REVIEW:

III.B. - Adjusted that the copy of the evaluation may be forwarded to Director of Mental Health

APPROVED:

Signature on file

G. STEVEN HAMMOND, PhD, MD, MHA
Chief Medical Officer

Signature on file

KEVIN BOVENKAMP,
Secretary for Health Services

Signature on file

DAN PACHOLKE, Secretary
Department of Corrections

Signature on file
POLICY

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 7.70; RCW 70.96A.095; RCW 71.34.500; RCW 71.34.530; ACA 4-4368; ACA 4-4397; ACA 4C-19; DOC 420.312 Body Cavity Search; DOC 620.010 Advance Directives; DOC 620.020 Non-Consensual Blood Draws; DOC 620.100 Force Feeding of Offenders; DOC 630.500 Mental Health Services; DOC 630.520 Mental Health Advance Directives; DOC 630.540 Involuntary Antipsychotic Administration; DOC 630.550 Suicide Prevention and Response; Health Information Management Protocols; State v. Koome, 84 Wash. 2d 901(1975)

POLICY:

I. [4-4397] [4C-19] The Department will provide offenders or their surrogate decision makers with the information they need to make informed decisions regarding their acceptance or refusal of Department provided health care, including mental health services.

DIRECTIVE:

I. [4-4368] [4C-19] General Requirements

A. Before initiating any services, health care providers will obtain the offender/surrogate decision maker’s consent by presenting the following information in language the offender/surrogate decision maker could reasonably be expected to understand: [4-4397]

1. Reasons for suggested assessments, evaluations, and/or tests.
3. The provider’s recommended course of treatment.
4. Reasons for the provider’s recommended course of treatment.
5. The nature and character of the proposed treatment.

B. Consent may only be obtained by a provider licensed to order the service.

1. The licensed provider must review the offender’s understanding of information delivered by others before finalizing informed consent.

II. Format of Informed Consent

A. Informed consent is the preferred option for obtaining consent in the Department.

1. Providers who wish to use the shared decision making option should refer to RCW 7.70 in order to meet the requirements for this process.
2. The Department discourages providers from allowing offenders to choose not to be informed of the elements of informed consent detailed in RCW 7.70.060, even though this is allowed per statute.
   a. If an offender chooses not to be informed, s/he should be asked to sign in the Limited Disclosure box on DOC 13-250 Consent to Surgical or Other Procedure.

B. In most cases, informed consent may be obtained verbally and documented in the offender health record.

C. Signed informed consent is required for:
   1. Procedures/treatments that pose substantial risk to the offender, such as:
      a. Incisions below the dermal layer,
      b. Chemotherapy for malignancy,
      c. Administration of intravenous contrast dye,
      d. Dental extraction,
      e. Root canal treatment, and
      f. Most invasive procedures.

2. [4-4368] [4C-19] Mental health treatment, including developing a treatment plan, per DOC 630.500 Mental Health Services.

3. Initiating clinical and/or forensic psychological or risk assessment evaluations, unless required by statute.
   a. When such evaluations are required by statute, the offender will be informed of his/her right not to participate and that the evaluation will be conducted regardless of the offender's degree of participation.
   b. Refusal to participate will be documented in the evaluation report.

D. Consent will be documented as follows:
   1. Informed consent will be documented on one of the following, as appropriate:
      a. DOC 13-250 Consent to Surgical or Other Procedure,
      b. DOC 13-339 Consent for Dental/Oral Surgery, or
      c. DOC 13-386 Consent for Evaluation and Initiation of Mental Health Treatment.
2. For shared decision making or for offenders who elect not to be informed, a document will be used which meets the requirements of RCW 7.70.

E. Consent may be offered, but is not required for:

1. Compliance with a court order, statute, or case law.
2. Care delivered per DOC 620.100 Force Feeding of Offenders.
3. Treatment of a self-inflicted injury or disease, when failure to intervene poses a risk of significant harm. [4-4397]
4. A body cavity search per DOC 420.312 Body Cavity Search.
6. Compliance with DOC 630.540 Involuntary Antipsychotic Administration, including examination conducted before the hearing.
7. Care for mentally ill offenders, when a reasonable clinician would conclude that delaying mental health treatment, including medications, might put the offender or others at imminent risk. Employees/contract staff will refer to DOC 630.500 Mental Health Services, DOC 630.540 Involuntary Antipsychotic Administration, and DOC 630.550 Suicide Prevention and Response for additional information.

III. Offenders Not Capable of Making Health Care Decisions [4-4368] [4-4397] [4C-19]

A. For purposes of giving informed consent, an offender is not capable of making health care decisions if s/he cannot comprehend or appreciate the risks and benefits associated with the proposed service, as determined by an appropriately trained and licensed health care or mental health provider, or by a court of law.

B. When a provider determines that an offender is not capable of giving informed consent, s/he must complete a written evaluation that will be placed in the legal section of the health record, with a copy forwarded to the Chief Medical Officer or Director of Mental Health, or their designee, as appropriate. This evaluation should include an identification of barriers, such as:

1. Communication skills,
2. Mental illness,
3. Developmental disability,
4. Senility,
5. Habitual drunkenness/excessive drug use, or
6. Any other physical or mental disorder affecting decision making ability.
C. As a general rule, an offender under the age of 18 is not capable of giving informed consent to health care.

D. In the absence of a relevant and current Advance Directive or court order, a surrogate decision maker, as defined by RCW 7.70.065, may act on behalf of an offender who is not capable of giving informed consent. Employees/contract staff may not act as a surrogate decision maker for this purpose.

E. A surrogate decision maker may not consent to:

1. Sterilization,
2. Antipsychotic medications,
3. Psychosurgery, or
4. Electroconvulsive therapy.

F. If an offender may be incapable of giving informed consent for an extended period of time or a surrogate decision maker cannot be found, the Chief Medical Officer, Chief of Dentistry, or Director of Mental Health, or their designee, in consultation with other appropriate employees/contract staff, will determine whether it is necessary to seek:

1. A court order,
2. Guardianship for health care decisions, or
3. Other appropriate assistance.

G. Emergency Medical Treatment When No Surrogate Decision Maker is Available

1. If a reasonable clinician would conclude that delaying medical or dental service might put the offender at significant risk, permission to treat will be obtained from the Chief Medical Officer or Chief of Dentistry, as applicable and if time permits.

2. If time does not permit, an appropriately licensed provider will provide necessary evaluation and care in the offender’s best interest and will notify the appropriate Department Director/designee as soon as possible.

H. Emergency Mental Health Treatment

1. Emergency mental health treatment may be given without consent if any conditions in Directive II.E. of this policy apply.

IV. Offender/Provider Contracts

A. When contracts are required between the provider and offender for participation in a health treatment program, the following will apply:
1. The contract will ensure the offender has the information necessary to make an informed decision regarding health care.
   a. Offenders not capable of making health care decisions will be allowed to participate in such a program by court order or with the written informed consent of a surrogate decision maker.

2. After being signed and dated, the contract will be placed in the legal section of the offender health record.

3. If before or during the treatment program an offender capable of giving consent refuses treatment, examination, or procedures, DOC 13-048 Refusal of Medical, Dental, Mental Health, and/or Surgical Treatment will be completed, signed, and dated by the offender, and placed in the legal section of the offender health record.

V. Refusal of Health Care Services

A. An offender who is capable of giving consent has the right to refuse examinations, treatments, and procedures after s/he is provided with the information listed in the General Requirements section of this policy.

B. Whenever an offender refuses health care specifically recommended or previously consented to, health care employees/contract staff will make an entry on DOC 13-435 Primary Encounter Report and forward the offender health record to the primary care practitioner/designee for review. The practitioner may:
   1. Schedule an appointment to discuss the refusal, the consequences of the refusal, and alternatives,
   2. Complete DOC 13-048 Refusal of Medical, Dental, Mental Health, and/or Surgical Treatment, and

C. When written consent for the service was or would normally have been obtained, or when the risk of refusal is significant, the primary care practitioner/or other designated health care practitioner must complete DOC 13-048 Refusal of Medical, Dental, Mental Health, and/or Surgical Treatment.
   1. Only a provider licensed to order the service may complete the form.

D. If, in the opinion of the practitioner, the offender’s refusal of services involves a communicable disease that may pose a threat to others, the offender may be isolated upon Superintendent/Community Corrections Supervisor approval.
VI. Photographs and Videotapes

A. If photographs or videotapes are part of a diagnostic or therapeutic procedure, reference to them will be made on the consent form used for the procedure.

B. Separate informed consent is not required for photographs or videotapes obtained for the offender’s clinical care if consent is not otherwise required for the procedure.

C. The Department will retain ownership of the photographs or videotapes of the offender’s body. These will be filed in accordance with Health Information Management Protocols.

DEFINITIONS:

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Health Care Provider, Informed Consent. Other words/terms appearing in this policy may also be defined in the glossary.

ATTACHMENTS:

None

DOC FORMS:

DOC 13-048 Refusal of Medical, Dental, Mental Health, and/or Surgical Treatment
DOC 13-250 Consent to Surgical or Other Procedure
DOC 13-339 Consent for Dental/Oral Surgery
DOC 13-386 Consent for Evaluation and Initiation of Mental Health Treatment
DOC 13-435 Primary Encounter Report