A. Purpose:
1. To delineate who may legally consent for treatment and authorize release of Protected Health Information for minor patients.

B. Policy:
1. In general, persons under the age of eighteen (18) are minors and do not have the legal capacity to consent to medical care or treatment. The consent of a parent or legal guardian is necessary, except in those situations discussed under Exceptions listed below. Either parent or a guardian can consent to treatment for a minor. If the parents are divorced, either parent can consent to treatment for the minor. Even a non-custodial parent can provide the legal consent for the minor’s treatment. RCW 26.09.310

2. Absent a court order to the contrary, each parent has the right to have full and equal access to healthcare records of the minor child. If a healthcare provider believes that access by a parent could pose an imminent threat of harm to the minor or to another person, access may be temporarily denied (see Evergreen policy Patient Access to Protected Health Information).

   a. Either parent may consent to treatment of a minor child. Even the non-custodial parent may consent to treatment of a minor child whom he/she accompanies for treatment. RCW 26.09.310 immunizes healthcare providers from liability based on informed consent only and permits a guardian or either parent to consent for treatment of a minor; permits a non-custodial parent to consent to treatment; and allows a parent to consent for treatment even if a court order or agreement between the parents provides that only one parent has the right to consent.

4. Illegitimate Minor.
   a. If the child is illegitimate, the mother can consent. If the father has legitimatized the child, he also can consent, provided that there is a court order granting him the right to make health care decisions or granting legal custody.

5. Minor as a Stepchild.
   a. If the minor has not been legally adopted, the stepparent cannot validly consent if the natural parent is available.

6. Minors with Guardian or Custodian.
   a. The following persons/entities may consent for minors in custodial or guardianship situations:
      i. Minor is in Foster Home or Shelter Care: The agency or person who can consent for treatment will be stated in a court order or in a placement agreement. This agreement or the court order should also state whether a parent must also consent;
ii. **Order Terminating all Parental Rights:** The parents have lost all right to consent. A court order will state who can consent for the minor's treatment when parental rights have been terminated;

iii. **Order Appointing Guardian or Custodian:** A court may state in an order that a person or entity is appointed to serve as the custodian or guardian of a minor. In this event, consent for the minor's treatment must be obtained from that person or entity;

iv. **Minor is Ward of Juvenile Court:** If the minor is a ward (in custody of juvenile court), the consent of the court or its designated agent must be obtained for the minor's treatment; and

v. **Authorized Representative:** A parent or guardian may give written authorization to another competent adult permitting them to consent to medical treatment of a minor child in his/her absence. Such written authorization may be contained in a limited durable power of attorney document. The person so authorized may consent to medical treatment for the minor in the absence of the parent or guardian for the duration of the authorization only. If an authorization exists, but the time period for it has expired, the parent or guardian must provide the consent for treatment.

7. **Exceptions:**

a. The consent of a minor's parent or legal guardian is not necessary in the following cases:

   i. **Emergencies.**

      I. An emergency exists when immediate treatment is necessary to preserve life, or to prevent serious deterioration or aggravation of the patient's condition. If delay for purposes of obtaining consent would not jeopardize the condition of the patient, express consent must be obtained. Implied consent in an emergency is to the treatment of the emergency only. In such cases, a medical consultation must be performed to confirm the existence of an emergency before treatment or a procedure is commenced. This should be documented in the medical record, together with statements by each physician consulted confirming that the emergency treatment was necessary because of an immediate threat to life or health.

      II. The consent of a parent or legal guardian, if reasonably available, should be obtained. If not available, such consent is not necessary.

      III. If the parent or legal guardian refuses to consent and time permits, the Juvenile Department of the county superior court should be contacted.

   ii. **Emancipated Minors.**

      I. If emancipated, a minor may give consent. A minor married to a person of full age (18) is considered to be emancipated. Moreover, a minor who is sixteen (16) years of age or older and a resident of Washington state may petition the superior court for a declaration of emancipation. Absent a court order, there is no clear definition of an "emancipated" minor. The physician obtaining consent must weigh the facts in determining whether
a minor is sufficiently emancipated to provide their own consent for treatment. Factors to be considered include the following:

A. Whether the minor is living with his/her parent or living elsewhere;
B. Whether the minor receives monetary support from his/her parents or is independent in their support;
C. The extent of contact with the parent; whether the minor lives and functions free from parental control or with minimal parental involvement;
D. Age of the minor, intelligence, maturity, education, independence, and ability to understand his/her medical condition, proposed treatment, risks, and alternatives to treatment; and
E. The physician must ask the minor sufficient questions to make an informed decision regarding his/her independence and capacity to provide an informed consent. The physician's discussion with the minor, information obtained from the minor, and the physician's basis for determining the minor's independence and emancipation must be documented in detail in writing in the medical record.

iii. **Minor With Sexually Transmitted Disease.**

A minor fourteen (14) years or older may consent to examination and treatment for a sexually transmitted disease, and may consent to HIV or other sexually transmitted disease testing, without the consent or knowledge of a parent or guardian. (Note: The parent or legal guardian has no obligation to pay unless he or she has personally consented.

iv. **Minor With Drug or Alcohol Abuse Condition.**

A minor thirteen (13) years of age or older may consent to outpatient treatment by a chemical dependency treatment program certified by the Washington State Department of Social and Health Services. A minor thirteen (13) years of age or older may not consent to inpatient treatment, unless the minor meets the definition of a child in need of services in RCW 13.32A.030(5)(a). Specifically, a child in need of services is defined as a juvenile:

A. Who is beyond the control of his or her parent such that the child’s behavior endangers the health, safety, or welfare of the child or other person;
B. Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours on two or more separate occasions from the home of either parent, a crisis residential center, an out-of-home placement, or a court-ordered placement; and
1. Has exhibited a serious substance abuse condition; or
2. Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person;

C. Who is in need of:
1. Necessary services, including food, shelter, health care, clothing, or education; or
2. Services designed to maintain or reunite the family;

D. Who lacks access to, or has declined to utilized these services; and

E. Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure.

II. A healthcare provider who provides outpatient treatment to a minor thirteen (13) years of age or older must notify the minor’s parents of such treatment if:

A. the minor consents to such disclosure; or

B. the treatment program director determines that the minor lacks the capacity to make a rational decision regarding disclosure. Such notice must be made within 7 days of the request for treatment and satisfy the requirements of RCW 70.96A.230.

III. Parental consent is required for inpatient and outpatient treatment of a minor under the age of thirteen (13). (Note: Unless personally consenting, the parent or legal guardian has no obligation to pay for any of the services provided by the chemical dependency facility). The consent of a minor is not required to admit the minor for either inpatient or outpatient treatment if such admission is made at the request of a minor’s parent.

v. Minor With Mental Illness.

I. General - a minor may be admitted for inpatient or outpatient treatment to an evaluation and treatment facility by application of a parent. The consent of the minor is not required for such evaluation and admission.

II. Thirteen Years or Older - any minor thirteen (13) years or older may request and receive outpatient treatment without parental consent. A minor thirteen (13) years of age or older may, with the concurrence of the professional person in charge of the facility, also admit himself or herself without parental consent to an evaluation or treatment facility for inpatient treatment, provided that notice is given to parents within 24 hours of admission.
A. If voluntarily admitted, a minor over the age of thirteen (13) may request discharge at any time. The minor must be discharged from the facility upon receipt of the minor’s notice of intent to leave. If a minor has been involuntarily admitted to a facility for an initial seventy-two (72) hour treatment period, the professional person in charge of the treatment facility may petition to have the minor committed to an evaluation and treatment facility for a fourteen (14) day diagnosis. If the professional in charge of the facility does not file a petition to commit the minor, the custodial parent may seek review of that decision in court.

III. Under Thirteen Years of Age - parental consent is required for inpatient and outpatient treatment of a minor under the age of thirteen (13).

vi. Unmarried, Pregnant Minors.

I. An unmarried, pregnant minor under the age of eighteen (18) may consent to termination of her pregnancy without parental consent and without the consent of the father of the fetus, provided she is not so young or immature as to be incapable of giving informed consent. The attending physician must make a determination regarding whether the minor is capable of giving informed consent based on facts including: minor’s age; intelligence; maturity; and capacity to understand her condition, options, and alternative for treatment and risks of treatment.

II. A pregnant minor under the age of eighteen, whether married or not, may consent to treatment of her pregnancy without the consent of her parents or the father of the fetus provided that she is not so young or immature as to be incapable of giving informed consent. The attending physician must make a determination regarding whether the minor is capable of giving informed consent based on facts including: her age; intelligence; maturity; and capacity to understand her condition, options, and alternative for treatment and risks of treatment, including non-treatment.

III. The physician should document in writing in the medical record his/her discussion with the minor, the factors considered in determining if the minor had capacity to provide informed consent and basis for his/her condition.

vii. Minor Consenting to the Care of Another.

I. An unmarried minor parent may consent to medical treatment for his/her child, provided the minor is not so young or immature as to be incapable of giving informed consent. The attending physician should determine the minor's capacity to provide informed consent by considering the following factors: the minor's age; intelligence; education; maturity; and ability to understand the child's condition, the nature of the proposed treatment, alternatives to treatment, and risks of treatment, including non-treatment. The physician's consideration and
assessment of these factors must be documented in writing in the medical record.

II. If the minor is not sufficiently mature, a guardian ad litem can be appointed to act in the best interest of the child and to make decisions regarding treatment on the child’s behalf.

III. If the minor does not have sufficient competence to provide adequate care for her/his child, the hospital should contact state agencies, including Child Protective Services, for intervention and assistance.

IV. When a minor is married to an adult, he or she is considered emancipated and therefore capable of giving consent for the care of the child.

C. RELEASE OF INFORMATION

1. Any minor who meets the criteria to provide informed consent for him or herself must consent to the release of information for that visit.

References

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Documents which reference this document

| Referenced Documents | Non-beneficial Care Decision-making Guidelines                       |       |
| Referenced Documents | Personal Representatives                                             |       |
| Referenced Documents | Informed Consent (Surgery and Invasive Procedure)                    |       |

Signed by

Steven E Brown, FACHE, CEO
(04/15/2009 12:00AM PST)

Effective 04/15/2009

Document Owner Williams, Brenda A