



Policy: **Intranet Copy** Informed Consent

Policy Facilitator:

Chief Medical Advisor

Classification:

Administration and Clinical

Authorised by : Chief Executive Officer

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1. Purpose and Scope

This policy specifies Waikato District Health Board's (Waikato DHB's) processes for ensuring compliance with legislative and ethical requirements for patients' informed consent to healthcare treatment or non-treatment.

Waikato DHB recognises that provision of information, as part of the informed consent process, to patients about their healthcare options offers the opportunity to enhance health gain for all patients, including Maori.

This policy applies to all Waikato DHB employees and external personnel. All health professionals have a statutory obligation to abide by the legislative requirements relating to informed consent.

2. Policy

- **Waikato DHB shall implement processes that ensure that:**
 - **patients competent to consent to a proposed healthcare treatment or procedure shall be given sufficient information to enable them to arrive at a voluntary decision as to whether or not to agree to that treatment or procedure**
 - **patients incompetent to consent to treatment have an authorised representative give informed consent on their behalf. Where there is no authorised person, consent may proceed by following Appendix B, 6 of this policy.**
- **It is necessary to obtain the patient's informed consent – either verbal or written - prior to the provision of any Waikato DHB healthcare service, except:**
 1. **for emergency situations where death or permanent disability will result if treatment is not provided immediately**
 2. **where a legal representative provides consent on the patient's behalf**
 3. **where the treatment can be given without consent under Right 7(4) of the Code of Health and Disability Services Consumers' Rights 1996**
 4. **where there is a court order consenting to treatment.**
- **Informed consent is a process, not a single event. It involves the patient making an informed choice between the healthcare options available, including the option of refusing the service.**
- **Waikato DHB respects the rights of patients to refuse treatment or to withdraw their consent to treatment.**
- **Waikato DHB informed consent processes shall respect – and wherever possible meet - the patient's cultural requirements.**

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3. Authorisation

Approved by:

Brent Wiseman, Chief Financial Officer,
Acting CEO on behalf of:
Dr. Jan White
Chief Executive Officer
Waikato District Health Board

Date

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Policy Processes and Associated Information

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Appendix A: Policy Processes

1. What is Informed Consent?

- There are three key components of informed consent:
 - **Competence:** the individual must have the capacity to either give or withhold their consent; (see Appendix A, 5)
 - **Sufficient information:** that capacity must be exercised on the basis of sufficient information;
 - **Voluntary choice:** the process must be conducted in the absence of coercion so the individual can make a voluntary choice. Voluntary choice means that the patient's consent to receive or decline a specified healthcare service is given freely, without inducement or any element of coercion, force, duress, bribe, fraud, misrepresentation, deceit or any other form of constraint.
- Informed consent may be given verbally or in writing. However, written consent is required in some circumstances under the Code of Health and Disability Services Consumers' Rights 1996 (see Section 2.1 below).
- Informed consent must be specific to the particular service being provided.

1.1 What is sufficient information?

- The patient must be provided with: '*...the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.*' (Right 6(2) of the Health and Disability Commissioner Code of Consumers' Rights 1996). To this end, the patient must be given information (without having to ask for it) about:
 - their condition, together with any findings from investigations already carried out;
 - the options available for treating that condition – important details of each option include risks, expected benefits, costs and any alternatives to the particular treatment proposed;
 - the consequences of not accepting the recommended option;
 - when they might expect to receive the service.
- Honest and accurate answers to all of the consumer's questions shall be given, including:
 - questions about how to obtain a second opinion;
 - the provider's recommended option and why they recommend it;
 - the name and position of the person providing the service.
- Pre-prepared written information about the proposed service must be written so as to be understood by the majority of patients, and where it exists, such information must be made available to the patient to support the verbal information provided.

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2. When is Informed Consent Required?

- If there is no pre-prepared information and the patient wishes to have a written summary of the information it must be provided.
- The patient's informed consent (either verbal or written) must be obtained for each proposed treatment or procedure.
- Informed consent must be obtained prior to the possible use of a re-used single use critical item i.e. one which enters the patient's sterile tissue or vascular / internal system. Refer to the Waikato DHB Policy: Re-use of Manufacturer Recommended Single Use Patient Care Items
- Separate consent must be obtained for each of the following:
 - surgery
 - the accompanying anaesthetic
 - treatment of an unforeseen pathology which only becomes apparent during that surgery
 - a diagnostic test which is invasive or which involves some risk to the patient.
- In circumstances where the patient is consenting to a number of procedures within an overall treatment (e.g. ventilation of a premature baby involves a number of procedures including intubation, suction, insertion of intra-vascular lines, blood sampling etc.):
 - each of the procedures must be explained and discussed with the patient or their legal representative
 - a single composite consent is sufficient, but this must be redone at least 6-monthly or if the patient's condition changes.
- In circumstances where the patient is consenting to a course of the same treatments over time (e.g. blood transfusions for haematological disorders, serial infusions after cancer therapy) a single composite consent is sufficient.
- When a patient is under a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 the patient must give informed consent for procedures required to treat conditions that are not mental disorders. In these circumstances the usual consent requirements apply.
- A Not For Resuscitation order must not be made unless, where possible and appropriate, the patient has first been given the opportunity of giving informed consent. Refer to the Waikato DHB Resuscitation / Not For Resuscitation Policy for further information relating to consent in this circumstance.

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- The informed consent of the family is required:
 - for a non-coronial post-mortem examination to proceed
 - for use of the patient's body or body part(s) for therapy, research or education after death (even where the deceased patient has indicated prior permission e.g. Driver's Licence.Refer to the Waikato DHB Policy: Care of the Deceased / Tupapaku for further information relating to consent in this circumstance.

2.1 When is Written Consent Required?

- Written informed consent is legislatively required if:
 - the patient is to participate in any research; or
 - the procedure is experimental; or
 - the patient will be under general anaesthetic; or
 - there is a significant risk of adverse effects on the patient.
- Written consent is also legislatively required if the patient is admitted under the Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - (S.59:) in order to receive treatment after the first month of a compulsory treatment order (unless treatment is approved by the psychiatrist appointed by the Review Tribunal); or
 - (S.60:) when electro-convulsive treatment is ordered (unless treatment is approved by the psychiatrist appointed by the Review Tribunal); or
 - (S.61:) when "brain surgery" is proposed.
- Waikato DHB also requires written consent in the following situations:
 - where either the patient or Waikato DHB requests it;
 - where consent is given by the patient's legal representative;
 - where a medical or nursing or midwifery student is to undertake an examination or a procedure whilst the patient is under general anaesthetic or sedation;
 - where clinical video or photographic recordings (including digital photographs) are taken (refer to the Waikato DHB Clinical Images Policy);
 - where it is planned to retain any body parts that are removed or obtained in the course of a health care procedure (refer to the Waikato DHB Return of Body Tissue Policy);
 - where transfusion of blood or blood products is required.

2.2 Verbal Consent

- Verbal consent is required in situations where the criteria for written consent do not apply. These include:
 - every healthcare service (treatment or procedure)
 - where a student, staff member or external personnel wish to observe procedures in theatre
 - where the patient's information will be used for case studies,

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peer review or exemplars

- where a teacher wishes to involve the patient in a teaching or clinical demonstration session.

3. When is Consent Not Required?

- There are a number of statutory exceptions to the requirements for informed consent (see Appendix B,4).
- In an emergency situation the primary need is to treat the patient, and circumstances may make gaining informed consent impossible. (An emergency exists when immediate action must be taken to preserve the life or health [physical or mental] of the patient.) In such situations the treatment provided shall only be that necessary to correct the life- or health-threatening situation. Any further treatment shall be deferred until consent is obtained.

4. How Long is Consent Valid?

- There are no limits placed on the length of time over which a consent remains valid. However, a patient may change their mind and withdraw their consent at any time. The currency of a consent should be checked at reasonable intervals in case it has been withdrawn.
- The need to obtain new consent arises when there is a change to some relevant circumstance e.g. new information about complications of the proposed treatment; a significant change in the patient's condition, or where consent has been withdrawn.

5. Who Can Give Informed Consent?

- For informed consent to be valid, it must be given by a competent patient or their legal representative (see Definitions Appendix B, 1) as summarised in the table below.

Patient	Competent	Incompetent
Under 20	<ul style="list-style-type: none"> • Patient can consent to their own treatment 	<ul style="list-style-type: none"> • Legal guardian (usually a parent)
20 years and over	<ul style="list-style-type: none"> • Patient can consent to their own treatment 	<ul style="list-style-type: none"> • Welfare guardian or • Attorney appointed under an Enduring Power of Attorney or • Advance Directive or • Health professional under Right 7(4) of the Code of Consumers' Rights 1996

- Right 7(2) of the Code of Consumers' Rights states: *'Every consumer must be presumed competent to make an informed choice and give informed consent, unless there are reasonable*

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grounds for believing that the consumer is not competent.'

- The patient's competence may be affected by medication, inebriation from drugs, alcohol or substance abuse, physical injuries, mental illness, or intellectual disability.
- Competence to consent shall be assessed by clinical evaluation and judgement. The health professional shall determine the degree to which the patient is able to:
 - comprehend sufficient information to allow him/her to make an informed choice;
 - retain that information and be able to recall it;
 - use and weigh this information in the reasoning and decision-making process;
 - communicate their understanding and that they reached a decision as a result of it.
- In determining competence, the focus must remain on the patient's capacity to reason. If it is clear that the patient is competent in this regard, then the conclusion they reach must be respected. This is the case even if the health professional believes it is not in the best interests of the patient. In addition to the factual information provided about their condition, the patient may choose to take additional factors into consideration. These may come from the patient's religious beliefs, cultural norms or their own personal value system. These factors may powerfully influence the choice made by the patient.
- Competence shall be assessed in relation to the patient's ability to make an informed choice and give informed consent to *a particular service*. (Some patients may not be competent to make a decision about some services but may be perfectly competent to decide about another less complex one.)
- A patient who has diminished competence shall retain the right to make informed choices and give informed consent, to the extent appropriate to his / her level of competence.
- The health professional shall make the final decision as to whether or not to provide the proposed treatment to the patient if:
 - there is no person with a legal right to consent for the patient; and
 - there is no clear indication of the patient's wishes; and
 - the provider has taken into account the views of other people with an interest in the welfare of the patient; and
 - provided that the decision complies with the law.
- Consent obtained by telephone can only be accepted if the health

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professional verifies the identity and authority of the person giving consent.

5.1 The Impact of Age on the Ability to Give Informed Consent

- (Refer also to the Statutory Exceptions relating to the Medical Officer of Health as specified in Appendix B, 4.)
- Competence is not directly linked to age. In general, persons aged 16 years or older can give informed consent.
- In general, informed consent is required from the guardian of a child under the age of 16 years before treatment can be carried out or the child is examined. **Exceptions** to this requirement for guardian consent are:
 - **if the child is competent**, the child's consent can be relied on;
 - **treatment carried out in an emergency** - refer to Appendix A, 3 above;
 - females of any age have the right to consent to or refuse a **termination of pregnancy** being carried out on themselves, provided they are competent to do so (Section 25A of the Guardianship Act 1968);
 - **contraceptive advice and treatment** (Repeal of S.3 of the Contraception, Sterilisation and Abortion Act 1977) – there is no restriction on the supply of contraceptive advice or the prescribing of contraception to young people under 16 years of age without the consent from a guardian;
 - in certain defined circumstances a child / person under the age of 20 years may be given a **blood transfusion** without his or her own consent or the consent of a guardian (see section 7 on *Blood and Blood Products*);
 - **Public Health doctors and nurses** have rights to enter schools or childcare centres without the child's or the child's guardian's consent, when there is concern about the health and welfare of the child (Section 125 of the Health Act 1956);
 - where a **compulsory medical examination** has been ordered by the Family Court under section 49 of the Children, Young Persons and Their Families Act, 1989 where abuse, neglect etc is suspected;
 - where **guardianship of the child has been vested in the court** and the power to give or withhold informed consent rests with the court or its agent. (Section 10A-10E of the Guardianship Act 1968);
 - where the **Director General of Social Welfare has been appointed as sole guardian of the child**, consent can only be given by the Director General (Section 110(2)(a) Children, Young Persons and Their Families Act 1989). A child 14 years and over may apply to the court to overturn a refusal of consent by the Director General in respect of important matters that affect the child. (Section 116).

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- Appendix B, 5 sets out the legislative requirements relating to the age of persons who can give consent under specific circumstances.
- A child's capacity to make an informed choice may be impaired by virtue of their reaction to their surroundings or to the pain of either their illness or the proposed treatment. While every effort should be made to support the child, their guardians' consent to the treatment will be sufficient if, for health reasons, treatment should not be postponed.
- **If the child is considered competent by the health professional:**
 - and there is no evidence of coercion, then the child's consent is sufficient, regardless of the views of the guardian(s).
 - but the decision the child is making is not voluntary or free of coercion, then the health professional should seek legal advice.
 - but the decision the child is making is incompatible with his/her guardians' decision and the recommendation of the doctor, then the health professional should seek legal advice.
- **If the child is not considered competent:**
 - a legal guardian can consent on the child's behalf.
 - If the legal guardian refuses to consent to treatment, and in the view of the doctor treatment is necessary, then there are other means of proceeding lawfully without the consent of a guardian and these must be used. Seek the advice of the Waikato DHB Legal Advisor.
- Informed consent for sterilisation of an intellectually impaired child is a complex legal issue, and the legal position in New Zealand is unclear. Staff shall obtain legal advice in this circumstance.

5.2 The Impact of Medication on Competence to Consent

- Medication given for pain relief, in anaesthesia, or to treat psychiatric illness may impair a patient's judgement and thus their competence to consent.
- Equally, although consciousness may sometimes be impaired by medication, there is often an improvement in concentration and thinking ability with the relief of symptoms such as pain, anxiety and depression. Conversely, unrelieved pain, anxiety or depression may of themselves impair competence.

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- Where practicable, discussion about treatment should take place before the administration of any medication liable to affect consciousness. However, consent for further treatment will sometimes be necessary from patients who have, for instance, received medication for pain relief. Sound clinical judgement must be exercised in these circumstances.
- When a patient's competence has clearly been impaired by medication, and the procedure is not urgent, recovery should be allowed before consent to further treatment is sought.

5.3 When the Patient is Not Competent

- Only certain people can consent to medical treatment on behalf of an incompetent patient.
 - *In the case of children*, S.25 of the Guardianship Act 1968 applies. Consent may be given by:
 - a parent or legal guardian;
or if no such person is available
 - "by a person in New Zealand who has been acting in the place of a parent";
or if neither of the above can be satisfied, then
 - by a District Court Judge or the Chief Executive of Social Welfare.
 - *In the case of adults (20 years and over)*, the provisions of the Protection of Personal and Property Rights Act 1988 may apply. This legislation provides for the appointment of welfare guardians and for the granting of enduring powers of attorney. In brief: a welfare guardian appointment is made by the Court on behalf of a person who is unable to appoint someone to look after their affairs; enduring power of attorney is granted by someone who is able to appoint another to look after their affairs when they become incompetent. It is important to confirm that the nature and extent of the welfare guardianship or power of attorney includes health care decisions. This can only be done by sighting the Court Order appointing a welfare guardian, a copy of which needs to be approved and signed by the Corporate Solicitor.
- Neither the patient's next of kin nor any other relative has the right to consent or refuse medical treatment on the patient's behalf unless they are a welfare guardian, or hold an enduring power of attorney in relation to personal care and welfare.
- No welfare guardian or person with enduring power of attorney has the legal right to consent on behalf of the patient to:
 - the administration of electro-convulsive treatment
or

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- the performance of brain surgery designed to destroy any part of the brain or any brain function or
- the patient taking part in any medical experiment (except for the purpose of saving the patient's life or preventing serious damage to the patient's health)
- No legal representative has the right to consent to the patient's sterilisation if the patient is incompetent only by reason of their age.
- If there is no one with a legal right to give consent on behalf of the incompetent patient, then Right 7(4) of the Code applies.

"Where a consumer is not competent to make an informed choice and give informed consent, and no person entitled to consent on behalf of the patient is available, the health professional (provider) may provide services where:

- a) *it is in the best interests of the patient; and*
- b) *reasonable steps have been taken to ascertain the views of the patient; and*
- c) *either:*
 - i) *if the patient's views have been ascertained and, having regard to those views, the health professional believes on reasonable grounds that the provision of services is consistent with the informed choice the patient would make if he or she were competent; or*
 - ii) *if the patient's views have not been ascertained, the health professional takes into account the views of other suitable persons who are interested in the welfare of the patient and are available to advise the health professional."*
(This would include such people as the patient's permanent caregivers, his or her GP, next of kin and whanau.)
- Appendix B, 6 provides a flowchart for use of Right 7(4).
- One way of knowing what the patient would have wished, is through the provision of an advance directive.

5.4 Advance

- An "advance directive" is defined in the Code of Consumers'

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Directive

Rights 1996 as:

"A written or oral directive –

- a) by which a consumer makes a choice about a possible future health care procedure; and*
- b) that is intended to be effective only when he or she is not competent."*

- A patient may use an advance directive to give health care direction in advance.
- An advance directive made by a **competent** adult to the health professional at the time of, or during, admission must be documented in the patient's clinical record and acted upon.
- It is strongly recommended that an advance directive be documented using the Waikato DHB template available on the Intranet. The appropriate Waikato DHB form for documenting 'Not for Resuscitation' must be used to document not for resuscitation decisions (refer to the Waikato DHB Policy: Resuscitation / Not For Resuscitation).
- An advance directive documented by Waikato DHB must include a statement made by the patient's consultant or delegate, affirming that the directive was made by a **competent** patient without any undue influence. This is particularly important for patients under the care of the Mental Health Services.
- The patient making an advance directive must be informed that it will be considered valid and will be acted upon unless the patient informs their consultant or consultant's delegate otherwise.
- For Mental Health patients, the Mental Health Compulsory Assessment and Treatment Act can override an advance directive. However, the Mental Health Practitioner must make a 'reasonable' attempt to follow the advance directive first and document valid reasons for not having followed the advance directive. An advance directive that states that the patient does not want to receive treatment for a mental illness will not be valid if the patient is receiving treatment under the Compulsory Assessment and Treatment Act (1992). (Bell, 2003, Human Rights Commission).
- An advance directive, if valid, must be flagged on the outside front cover of the patient's current clinical record and must be retained in the current clinical record.
- If there is doubt about the validity of an advance directive or there is strong opposition by family to its terms, then legal advice must

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be obtained.

- The ongoing validity of the advance directive must be checked with the patient on each patient admission.

5.5 Patient Refusal to Consent to Treatment

- When a competent patient does not consent to all or part of treatment staff shall:
 - explain possible risks and consequences involved in refusing treatment
 - provide relevant health information, including information on continuing care requirements
 - inform the patient's responsible clinician of the patient's refusal to consent to treatment
 - reassure the patient that the decision to refuse treatment will not affect their access to future treatment
 - with permission of the patient or under Section 7A of the Mental Health (Compulsory Assessment and Treatment) Act 1992 involve family / whanau, support person/s and / or advocates
 - contact the Mental Health Crisis Assessment and Treatment Team to enact the Mental Health (Compulsory Assessment and Treatment) Act 1992 if appropriate
 - if appropriate facilitate discharge or support self discharge (refer to the Waikato DHB Admission, Discharge and Transfer Policy)
 - if appropriate seek legal support from the Legal and Risk Service e.g. treatment of child or young person
 - document the patient's refusal to consent in the patient's clinical record. (Refer to Appendix A, 8.1 for refusal of blood or blood products.)

6. Responsibilities

6.1 Who is Responsible for Providing the Information?

- The primary responsibility for ensuring information is imparted to the patient or their legal representative lies with the person who is responsible for the procedure.
- Where it is impracticable for all information to come from the health professional conducting the procedure, an appropriate health professional familiar with the treatment or procedure, and with adequate knowledge of the risks and benefits of the treatment or procedure, may impart the information.
- Anyone involved in the care or treatment of a patient who believes the patient is not being kept adequately informed must convey this to the clinician responsible for the patient's care.

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6.2 Who is Responsible for Obtaining Informed Consent

- The health professional responsible for the procedure being performed also has the responsibility to ensure the patient's informed consent is obtained. This must be:
 - the patient's consultant or delegate (in the in-patient environment).
 - the patient's key worker (in Mental Health Community Services)
 - the patient's primary health professional (in Community Services)
 - the patient's Allied Health professional (for Allied Health procedures).
- Where the health professional or consultant's delegate is unable to answer the patient's queries, or lacks the depth of knowledge to provide sufficient information to the patient, that health professional must request an appropriate experienced colleague / senior to provide the information to the patient.
- The Medical Council advises that no doctor should obtain a patient's informed consent where they do not feel competent to do so.

7. The Process of Obtaining Informed Consent

- Patients must be informed of their right to decide for themselves whether to consent, or to refuse to consent, to treatment (subject to the provisions of Acts such as those listed in Appendices B4 and B,5).
- Within the resources and time available, the process of obtaining informed consent involves the following steps. The person(s) obtaining informed consent must:
 - establish a friendly and supportive environment which encourages open, honest and full communication; and
 - give sufficient information to allow the patient to make an informed choice, taking into account the patient's cultural needs e.g. information should be provided using language and examples the patient can understand (Maori Patient Advocates may be accessed for assistance); and
 - answer questions; and
 - obtain the patient's (or their legally authorised representative's) verbal consent and document this in the patient's clinical record; and if required
 - obtain the patient's (or their legally authorised representative's) written consent using an approved Waikato DHB Consent Form.
- If there is no one with a legal right to give consent on behalf of the incompetent patient, then Right 7(4) of the Code of Consumers'

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Rights may apply (refer to Appendix B, 6).

- The process of obtaining informed consent may occur during one or more appointments with the patient.

- To facilitate this process, the relevant health professional(s) must, wherever practicable:
 - make every effort to ensure the privacy of discussions of diagnosis and treatment options with the patient;
 - respect the patient's dignity e.g. in out-patient clinics, where practical, patients should be encouraged to dress in their own clothes and be comfortably seated before discussion of diagnosis and treatment options occurs.
 - respect the patient's cultural and personal needs e.g. support the involvement of family / whanau in discussions if appropriate
 - provide information to the patient in a language, form and manner that the patient can easily understand. Where necessary it should be translated into the patient's own language.
 - use audio-visual material where it could be helpful in providing the information needed.
 - allow sufficient time for the patient to read written information, and discuss this and any verbal information with whomever he/she wishes.
 - advise patients that they have a right to have another person or persons present during the discussion related to the proposed treatment or procedure. A Patient Advocate may attend at the request of the patient.
 - encourage the patient to ask questions or suggest alternative points of view.

- A patient may waive the right to discuss details of the treatment. The health professional should record this decision in the patient's clinical record.

7.1 Documentation of Informed Consent

- Within the resources and time available, documentation of written informed consent must be recorded in the patient's clinical record and, where practical, must include the following:
 - what information was provided to the patient, when, by whom and who else was present
 - questions asked by the patient and the answers given
 - specific wishes of the patient
 - who gave the consent i.e. whether it was the patient or the person acting on his / her behalf
 - what treatment or procedure that consent was given for.

- Documentation of verbal informed consent is discretionary and

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may be completed when the circumstances indicate that a written record may be useful at a later stage.

- Where the patient has declined to give their informed consent, this shall be documented in the clinical record.

7.2 Informed Consent Forms

- All forms used for recording the patient's informed consent shall:
 - comply with Waikato DHB's Requirements for Consent Forms (see Appendix B, 7) and
 - be approved by the HW Clinical Records Committee
 - be filed in the patient's clinical record.

8. Blood and Blood Products

- Blood and blood products are prescribed drugs (Medicines Act 1981 Schedule A). Refer to the Waikato DHB Medicines Management Policy regarding their prescription and use.
- Every patient who is a potential recipient of blood or blood products (or their legal representative) must be given a copy of the NZ Blood Service information brochure. It is important that they are:
 - given time to read the brochure, and
 - advised of any alternatives to transfusion of volunteer donated blood, if any e.g. use of patient's own blood, use of autologous transfusion, and
 - given the opportunity to have their queries answered.
- The patient or their legal representative must give their written consent for the administration of blood or blood products to the patient.
- Where transfusion may be needed during surgery, written consent for this would usually be obtained at the same time as consent is obtained for the use of the anaesthetic.
- **In an emergency situation** where the patient cannot give consent, blood products may be given to preserve life or prevent permanent or serious injury. When the emergency situation has passed, further treatment must not be given without the consent of the patient.

8.1 Refusal of Blood or Blood Products

- **In an emergency situation**, if there is prior knowledge that the patient would not agree to blood transfusion e.g. advance directive, this must be respected unless there is good reason to believe the directive is not valid. (See also the statutory exception to the need to gain informed consent in Appendix B, 4)
- **In other situations**, when a competent adult patient refuses blood or blood products, this decision must be respected. The

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responsible health professional must ensure that:

- the person making the decision fully understands the implications this refusal may have on the clinical outcome, and
- the decision is not the result of any outside influence or coercion
- the decision is documented on the Waikato DHB Blood Consent Form.

- Where the health professional is concerned about the legal or ethical aspects of a particular situation, the advice of the Waikato DHB Legal and Risk Service should be sought.

9. Organ Retrieval and Use for Therapeutic Purposes

- In accordance with the Human Tissue Act 1964 the patient may consent to use of his body or a specified part of his/her body either in writing at any time or verbally in the presence of 2 or more witnesses during his/her last illness. This consent shall be documented in the patient's clinical record.
- Removal of organs for therapeutic purposes e.g. transplant, medical education, may only be carried out by a medical practitioner who has no reason to believe:
 - That the deceased person has expressed an objection to such removal / use
 - That the surviving spouse or any surviving relative of the deceased person objects to such removal / use.
- If the death is reportable to the Coroner, removal of organs for therapeutic purposes must not occur without the Coroner's permission.

9. Success Indicators

- The patient's written consent is documented in the patient's clinical record for all circumstances requiring it.
- All Waikato DHB consent forms comply with the requirements of this policy.

Appendix B: Associated Information

Definitions

Guardian

The mother and father of a child or young person under the age of 20 years, unless the mother is the sole guardian or there is a court order appointing a different or additional guardian.

The mother is the sole guardian if:

- she is not married to the father; and either
 - i) has never been married to the father; or
 - ii) her marriage to the father was dissolved before the child was conceived; and

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- the mother and the father were not living together as husband and wife at the time the child was born.

(See section 6 of the Guardianship Act 1968)

Legal Representative

For a person under 20 years:

- the person's legal guardian (usually a parent)

For a person 20 years and over:

- the person's welfare guardian or
- the person's attorney appointed under an Enduring Power of Attorney.

Patient

In this policy the word 'patient' is used generically to refer to consumer, client, tangata whaiora, resident.

Provider

The individual health professional providing any health or disability service.

2. Legislative Requirements

- Accident Insurance Act 1998
- Alcoholism and Drug Addiction Act 1966
- Children, Young Persons and their Families Act 1989
- Contraception, Sterilisation and Abortion Act 1994
- Coroner's Act 1988
- Crimes Act 1961
- Criminal Investigations (Blood Samples) Act 1995
- Guardianship Act 1968
- Health Act 1956
- Health and Disability Commissioner Act 1994
- Health and Disability Commissioner Code of Consumers' Rights 1996
- Health and Disability Services (Safety) Act 2001
- Health Information Privacy Code 1994
- Health (Immunization) Regulations 1995
- Human Rights Act 1993
- Human Tissue Act 1964
- Land Transport Act 1998
- Mental Health (Compulsory Assessment and Treatment) Act 1992 and Amendments 1996
- New Zealand Bill of Rights 1990
- Parents Act 1953
- Privacy Act 1993
- Protection of Personal and Property Rights Act 1988
- Transport Act 1962
- Treaty of Waitangi Act 1975
- Tuberculosis Act 1948
- The United Nations Convention on the Rights of the Child 1989

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3. Associated Documents

- Waikato DHB Resuscitation / Not For Resuscitation Policy
- Waikato DHB Towards Maori Health Gain Organisational Framework
- Waikato DHB Clinical Records Policy
- Waikato DHB Care of the Deceased / Tupapaku Policy
- Waikato DHB Maori Health Policy
- Waikato DHB Medicines Management Policy
- Waikato DHB Privacy Policy
- Waikato DHB Return of Body Tissue Policy
- Waikato DHB Research Policy
- Waikato DHB Policy: Re-use of Manufacturer Recommended Single Use Patient Care Items
- Waikato DHB Interpreters Policy
- Health and Disability Sector Standards NZS 8134:2001
- Quality Health NZ Accreditation Standards
- National Mental Health Standards
- United Nations Convention on the Rights of the Child

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4. Summary of Statutory Exceptions to Requirements for Informed Consent

1. Abortions on persons who lack "mental capacity"	S34 of Contraception, Sterilization and Abortion Act 1977 requires certain enquiries be made before an abortion is authorised in a person who lacks mental capacity to consent.
2. Definition/treatment of alcoholics/drug addicts	Alcoholism and Drug Addiction Act 1996 – A Judge may issue orders for detention and treatment of alcoholics and drug addicts that require compliance.
3. Treatment of armed forces personnel	S72 of the Armed Forces Discipline Act 1971 provides a range of circumstances where an officer must submit to treatment if ordered to do so.
4. Taking blood samples to detect drink driving offences	S72, 73 and 74 of the Land Transport Act 1998 allows the taking of blood samples from persons attending hospital or doctor's surgery suffering injury as a result of a motor vehicle accident.
5. Blood transfusions for persons under 20 years	S126B of the Health Act 1956 provides defined immunity to a medical practitioner in defined circumstances; necessary to save the life or prevent permanent injury to mental, physical health – where reasonable attempts to obtain consent of a guardian have been made, or such consent has been refused.
6. Civil proceedings	S100 of the Judicature Act provides that the High Court can order that a person submit to a medical examination where the physical or mental condition of a person party to the proceedings is relevant to any matter in question.
7. Contraception to persons who are mentally subnormal	S4 of the Contraception, Sterilization and Abortion Act 1977 provides that women who are described as mentally subnormal, as defined by the Act, can be given contraceptives without their consent.
8. Examinations of children in public and private schools	S125 of the Health Act 1956 permits the Medical Officer of Health to enter schools and child care centres to examine children (subject to the request of the school in the case of private schools). The Officer may examine any child at the school or centre. The prior consent of the parents is not required.
9. Children suffering from ill treatment, abuse or neglect	S49 and S53 of the Children Young Persons and Their Families Act 1989 contains provisions to conduct examinations and report without their or their parent's consent, subject to certain provisions.
10. Treatment of infectious/venereal disease	S77 of the Health Act 1956 empowers a Medical Officer of Health (MOH) to enter any premises and examine any person believed to be suffering from, or recently exposed to, an infectious disease. S88(1) of the Health Act 1956 makes it mandatory for persons suffering from venereal diseases to undergo treatment. S90(10) of the Health Act 1956 requires parents or guardians of children suffering from venereal disease to make them available for treatment.
11. Treatment of persons lacking capacity to consent	Right 7(4) of the Code of Health and Disability Services Consumers' Rights may apply.
12. Mentally ill persons	The Mental Health (Compulsory Assessment and Treatment) Act 1992. A person who is required to undergo assessment in terms of Part I of the Act or under an Order for compulsory treatment in terms of Part II, must comply subject to certain provisions.

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13. Blood samples from Police suspects	The Criminal Investigations Act 1995. The High Court may order the taking of blood samples from suspects in Police investigations when suspect declines consent.
14. Post-Mortems	The Coroners Act 1988 empowers the Coroner to require a post-mortem, which the deceased family does not have the right to refuse.
15. Offence likely to cause immediate/serious injury to person/property	S41 of the Crimes Act 1961 allows restraint without consent where there is the likelihood of suicide or an offence likely to cause immediate/serious injury to any person or property.
16. Examination and treatment of persons with Tuberculosis	S9 of the Tuberculosis Act 1948 empowers MOH to require a person refusing/failing to undergo an examination to do so. S16 of the Tuberculosis Act 1948. A District Court Judge may make an Order detaining a TB patient in hospital for a specified time to undergo treatment.
17. Persons under 20 years who lack "capacity" to give consent	S25(3) of the Guardianship Act 1968 permits a guardian, person acting in place of a parent, District Court Judge or Director General of Department of Social Welfare to give consent to any medical, surgical or dental procedure. S10B of the Guardianship Act 1968 allows the High Court or Family Court or duly appointed agent of the High Court to give consent to any form of medical treatment or procedure that is in that person's welfare.
18. Welfare Guardians	The Protection of Personal and Property Rights Act 1988 allows the Court to appoint a Welfare Guardian to make decisions on behalf of a person 20 years of age or over who lacks capacity to make or communicate a decision. It also enables a person to appoint an attorney to act for them in advance of incapacity.

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5. Summary Of Statutory Provisions Relating To Persons Who Can Give Consent

NB: The following summary is intended only as a guide. The full statutory provisions should be consulted and advice from the Legal and Risk Service sought where appropriate.

Persons in Respect of Whom Consent can be given	Who can Give Consent	What Consent can be Given	Statutory Provisions
Persons 16 years of age or over	Such persons can consent for themselves.	Any medical, surgical, or dental procedure.	S25(1), (2) Guardianship Act 1968.
Persons under 16 years of age who lack capacity to give consent	A guardian. In the absence of a guardian, a person in NZ who has been acting in the place of a parent. In the absence of such a person, a District Court Judge or the Chief Executive of the Department of Child, Youth and Family.	Any medical, surgical, or dental procedure.	S25(3) Guardianship Act 1968.
Persons under 20 years of age who lack the capacity to give consent	A guardian. In the absence of a guardian, a person in NZ who has been acting in the place of a parent. In the absence of such a person, a District Court Judge or the Chief Executive of the Department of Child, Youth and Family.	Any medical, surgical, or dental procedure.	S25(3) Guardianship Act 1968.
Persons under 17 years of age in respect of whom agreements have been made under S139, 140, or 141 Children, Young Persons and Their Families Act 1989 for their temporary care, extended care, or the extended care of the severely disabled person.	The Chief Executive of Social Welfare, Iwi Authority, Cultural Authority, or a Child and Family Support Service.	Any medical, surgical, or dental procedure.	S149 Children, Young Persons and Their Families Act 1989.
Persons under 17 years in respect of whom a medical examination is required by a Social Worker employed by the Department of Child, Youth and Family.	A parent or guardian.	A medical examination other than an examination under anaesthetic, or an internal examination of the anus or genitals of the young person unless the doctor performing the examination believes the child or young person has been sexually abused and the child or young person gives consent.	S53(2), S55 Children, Young Persons and Their Families Act 1989.

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Persons in Respect of Whom Consent can be given	Who can Give Consent	What Consent can be Given	Statutory Provisions
Persons under 17 years in respect of whom a medical examination is required by a Social Worker employed by the Department of Child, Youth and Family.	Such persons may consent for themselves.	A medical examination involving an internal examination of the anus or genitals if the doctor carrying out the examination believes they have been sexually abused.	S55(1)(b) Children Young Persons and Their Families Act 1989.
Persons under 20 who are not or have not been married who are "incapacitated" in respect of whom a welfare guardian has been appointed because no parent or guardian is living or in regular contact with that person and it is in their interests that a welfare guardian be appointed.	Welfare guardian	Any medical treatment or procedure other than electro-convulsive treatment, brain surgery designed to change the person's character, and medical experiments not conducted to save the person's life or prevent serious illness to their health.	S12(2), (3), S18(1)(d), (e), (f) Protection of Personal and Property Rights Act 1988.
Persons under 20 who are not or who have not been married.	High Court or Family Court or duly appointed agent of the High Court or Family Court.	Any form of medical treatment or procedure that is in that person's welfare.	S10B Guardianship Act 1968.
Any pregnant female regardless of age.	Can consent in their own capacity.	The performance of an abortion on themselves.	S25A Guardianship Act 1968.
"Incapacitated" persons 20 years of age or over in respect of whom a welfare guardian has been appointed	Welfare Guardian	Any medical treatment or procedure other than electro-convulsive treatment, brain surgery designed to change the person's character, and medical experiments not conducted to save the person's life or prevent serious illness to their health.	S12(2), S18(1)(d), (e), and (f) Protection of Personal and Property Rights Act 1988.
"Idiots, mentally disordered persons, and persons of unsound mind."	High Court.	Any medical treatment or procedure that is in the person's best interests.	S17 Judicature Act 1908.

Source: Collins DB, Medical Law in NZ, Brooker & Friend Ltd, Wellington 1992.

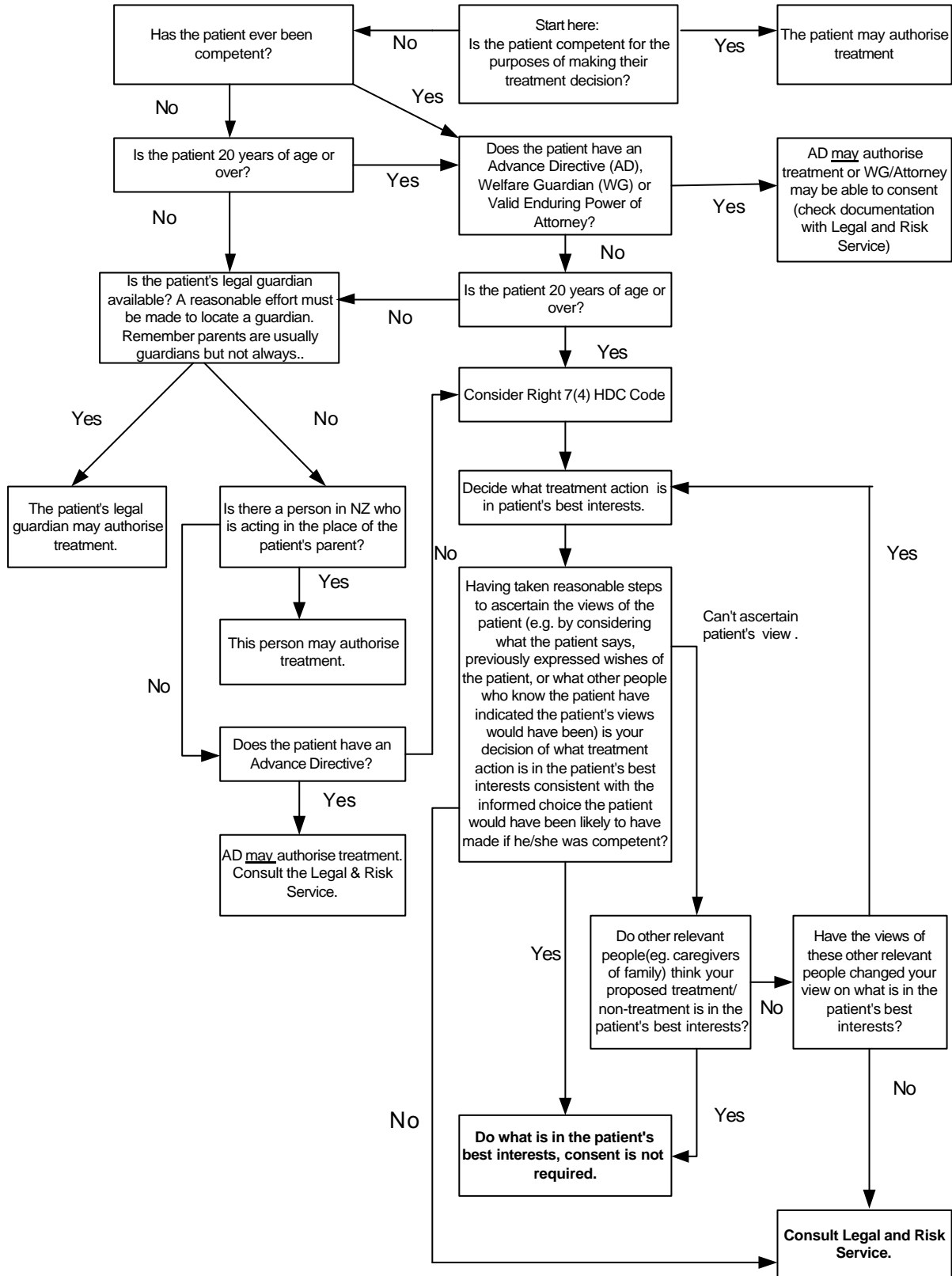
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6. Use of Right 7(4) of the Health and Disability Services Consumers' Rights 1996

APPLICATION OF OF RIGHT 7(4)



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