
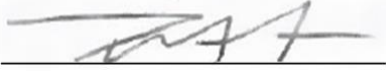


<b>POLICY TITLE: INFORMED CONSENT FOR AN ADULT RESIDENT</b>		<b>PAGE 1 OF 6</b>
<b>POLICY NUMBER: 18.3.1 (AF)</b>		
<b>CHAPTER 18: HEALTH CARE SERVICES</b>		
	<b>STATE of MAINE</b> <b>DEPARTMENT of CORRECTIONS</b> <b>Approved by Commissioner:</b> 	<b>PROFESSIONAL STANDARDS:</b>  <b>See Section VIII</b>
	<b>EFFECTIVE DATE:</b> <b>December 15, 2003</b>	<b>LATEST REVISION:</b> <b>April 16, 2026</b>

**I. AUTHORITY**

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Section 1403.

**II. APPLICABILITY**

All Departmental Adult Facilities

**III. POLICY**

Access to necessary health care services is a right, rather than a privilege. The Department ensures that adult residents have the right to make informed decisions regarding health care, including, where applicable, the right to refuse care.

**IV. DEFINITIONS**

1. Competent - a resident is competent if they have the ability to understand the significant benefits and risks of, and alternatives to, proposed health care and to make and communicate a reasoned health care decision.
2. Emergency treatment - medical care for conditions that pose an immediate threat to life, limb, or long-term health, requiring rapid intervention to prevent serious harm, disability, or death, often delivered in hospital emergency departments for severe issues like breathing difficulties, diabetic coma, major injuries, or sudden loss of consciousness, distinguishing itself from urgent care for less severe, but still timely, needs.
3. Health care provider - for purposes of this policy, physician, physician assistant, or nurse practitioner, or, where applicable, dentist, optometrist, or ophthalmologist.
4. Informed consent - a voluntary consent, usually in writing, for treatment after the material facts about the nature, risks and benefits of the proposed treatment, and the available alternatives have been provided.

**V. CONTENTS**

- Procedure A: General
- Procedure B: Informed Consent
- Procedure C: Right to Refuse

- Procedure D: Resident with a Court-Appointed Guardian
- Procedure E: Emergency Hospital Treatment or End of Life Care

**VI. ATTACHMENTS**

- Attachment A: Consent to Medical, Dental, Eye, and Mental Health Treatment and Information Sharing ([paper/online](#))
- Attachment B: Consent to Invasive Medical or Eye Procedures, Including Surgery ([paper/online](#))
- Attachment C: Consent for Invasive Dental Procedures, Including Surgery ([paper/online](#))
- Attachment D: Refusal of Treatment ([paper/online](#))

**VII. PROCEDURES**

**Procedure A: General**

1. An adult resident shall be provided with general information regarding medical, dental, and eye services and mental health care as part of the admission health screening process.
2. The facility Health Services Administrator (HSA), or designee, shall ensure each resident is informed about health care in a language that is easily understood.
3. Non-emergency treatment shall not be provided to a resident who refuses the treatment, regardless of whether or not they are competent or have a court-appointed guardian.
4. Emergency treatment shall not be provided to a resident who refuses treatment if they are competent to refuse the treatment, except as set out below.
5. The resident disciplinary process shall never be used to force unwanted treatment on a resident.
6. Neither restraints, nor other form of physical force, may be used to force unwanted treatment on a resident who is competent, except as set out below and only in accordance with Department Policy (AF) 18.13, Therapeutic Restraints and Seclusion.
7. In any emergency in which a resident is unable to consent to or refuse treatment (is unconscious, unable to communicate, or disoriented) and when it is necessary to provide treatment before consent can be obtained, necessary treatment shall be provided, using only the degree of physical force necessary, unless the treatment is governed by an Advance Directive.

**Procedure B: Informed Consent**

*5-ACI-6C-04 & 4-ACRS-4C-19*

1. The intake nurse shall provide a resident with a general Consent to Medical, Dental, Eye, and Mental Health Treatment and Information Sharing form (Attachment A) for completion after being provided with the general information as part of the admission health screening process.

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2. The facility Health Services Administrator (HSA), or designee, shall ensure that each signed consent form is uploaded into the resident's electronic health care record (EHCR).
3. If a resident refuses to sign the general consent to treatment form, the resident may still consent to specific health care by submitting a sick call slip.
4. Regardless of whether the Consent to Medical, Dental, Eye, and Mental Health Treatment and Information Sharing form has been signed or not, for invasive medical, eye, or dental diagnostic and/or treatment procedure(s), the resident shall be provided with information about the condition, its nature and duration, the proposed diagnostic and/or treatment procedure(s), the benefits and risks of the proposed procedure(s), any alternatives to the proposed procedure(s), and the consequences of refusing the proposed procedure(s).
5. After the resident has had the opportunity to consider this information, and if the resident consents to the procedure, they shall sign the Consent to Invasive Medical or Eye Procedures, Including Surgery form (Attachment B) or the Consent to Invasive Dental Procedures, Including Surgery form (Attachment C), as applicable, and the procedure shall be provided.
6. In the event that a resident requires assistance to communicate effectively or understand health care treatment or needs, the facility HSA, or designee, shall ensure the resident is provided with an interpreter, assistive device, or other necessary assistance.
7. Any time that there is a concern that a resident might not be competent to make health care decisions, that resident shall be referred to appropriate mental health care staff for a determination of whether or not the resident is competent to make the health care decision in question.
8. If the mental health care staff determines that the resident is incompetent to make a health care decision and the resident has no court-appointed guardian, the Warden, or designee, shall contact the Deputy Commissioner, or designee.
9. The Deputy Commissioner, or designee, may, after conferring with the Regional Medical Director, or designee, and any other person as appropriate, contact the Department's legal representative in the Attorney General's Office to request they initiate court proceedings for the appointment of a guardian for health care decisions.
10. Prior to the appointment of a guardian, the procedures set out in this policy shall be followed, except that the resident shall not be asked to sign any consent or refusal forms with respect to any decision(s) they are incompetent to make and shall not be provided any non-emergency treatment they are not competent to consent to.

**Procedure C: Right to Refuse**

1. In a situation in which a resident refuses health care, the health care staff shall explain to the resident the risks of refusal and attempt to persuade the resident to accept the treatment.
2. If the resident continues to refuse, the health care staff shall provide the resident with a Refusal of Treatment form (Attachment D) to sign and upload it into the EHCR.

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3. If the resident refuses to sign the form, the health care staff and a witness shall document the refusal on the form. It shall also be documented in the progress notes of the electronic health care record (EHCR) that the resident refuses care and refuses to sign the Refusal of Treatment form.
4. When a resident refuses to go to the medical department or other treatment area for a scheduled appointment or procedure, unless safety or security risks prevent it, the resident shall be required to go to the medical department in order for health care staff to verify the refusal, or, if necessary, the health care staff shall verify the refusal at the resident's location. Any refusal shall be documented by the health care staff in the resident's EHCR.
5. A situation in which a resident refuses to take non-emergency medications that have been ordered shall be handled in accordance with Department Policy (AF) 18.7, Pharmaceuticals.
6. Non-emergency treatment shall not be provided to a resident who refuses the treatment.
7. Except as set out below, emergency treatment shall not be provided to a resident who refuses the treatment.
8. Emergency treatment shall be provided, despite a refusal by a resident, regardless of whether or not they are competent or have a court-appointed guardian, for one of the following reasons:
  - a. to treat a resident whose refusal of treatment would result in an immediate and serious risk to health, such as a resident on a prolonged hunger strike who is refusing lifesaving nutrition or fluids or a resident with diabetes who is routinely refusing insulin, etc.; or
  - b. if the resident's condition poses a danger to others such as a highly contagious disease and therapeutic seclusion, as provided in accordance with Department Policy (AF) 18.13, Therapeutic Restraints and Seclusion, cannot be used.
9. By refusing treatment at a particular time, the resident does not necessarily waive their right to subsequently request the treatment or other health care.

**Procedure D: Resident with a Court-Appointed Guardian**

1. If a resident has a court-appointed guardian for health care decisions, the health care staff shall provide the guardian with the same information about health care services as was provided to the resident and shall request the guardian also sign the Consent to Medical, Dental, Eye, and Mental Health Treatment and Information Sharing form (Attachment A).
2. Regardless of whether the Consent to Medical, Dental, Eye, and Mental Health Treatment and Information Sharing form has been signed or not, for invasive medical or dental diagnostic and/or treatment procedures, the health care staff shall provide the guardian with the same information as was provided to the resident about the condition, the nature and duration, benefits, consequences, and risks of the proposed procedure,

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any alternatives or options to the proposed procedure, and the consequences of refusing the proposed procedure.

3. After the guardian has had the opportunity to consider this information, and if the guardian consents to the procedure, they shall sign the Consent to Invasive Medical or Eye Procedures, Including Surgery form (Attachment B) or the Consent to Invasive Dental Procedures, Including Surgery form (Attachment C), as applicable, and the procedure shall be provided.
4. If a resident who has a court-appointed guardian refuses treatment after the health care staff has explained the risks of refusal and attempted to persuade the resident to accept the treatment, the health care staff shall contact the resident's guardian for a decision and document in the progress notes of the electronic health care record (EHCR) that contact and the guardian's decision. If applicable, the health care staff shall also ask the guardian to sign the appropriate consent for an invasive procedure.
5. The health care staff shall inform the resident of the guardian's decision and, if necessary, attempt to persuade the resident to accept the decision, including, if appropriate, arranging communication between the guardian and the resident.
6. If the resident refuses to accept a decision regarding non-emergency treatment, the treatment shall not be provided.
7. Except as set out in Procedure C. for the provision of treatment without consent, if the resident refuses to accept a decision regarding emergency treatment or if the guardian cannot be contacted in time to make a decision about emergency treatment, the Warden, or designee, shall contact the Deputy Commissioner, or designee.
8. The Deputy Commissioner, or designee, may, after conferring with the Regional Medical Director, or designee, and any other person as appropriate, contact the Department's legal representative in the Attorney General's Office to inquire about obtaining a court order for involuntary treatment or taking other appropriate action.

**Procedure E: Emergency Hospital Treatment or End of Life Care**

1. If a resident refuses emergency hospital treatment that has been determined medically necessary, whether the resident is nevertheless provided the treatment shall be determined in accordance with the hospital's normal practices for providing necessary emergency treatment to a person in the community who refuses treatment, including, if applicable, practices for providing involuntary treatment with a court-appointed guardian's consent or a court order.
2. If resident is unable to consent to or refuse emergency hospital treatment (is unconscious, unable to communicate, or disoriented), whether the resident is nevertheless provided the treatment shall be determined in accordance with the hospital's normal practices for providing emergency treatment to such a person in the community, including, if applicable, consultation with the resident's family, court-appointed guardian, health care power of attorney, etc.

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3. Under no circumstances shall any Department employee or any person affiliated with the Department's contracted health care services provider give consent for a hospital to provide treatment to a resident, unless there is a court order to that effect.
4. In the situation of a terminally ill hospitalized resident who is competent to make an informed decision about end of life care or who has an advance directive, end of life care shall be provided in accordance with the resident's wishes.
5. In the situation of a terminally ill hospitalized resident who is not competent to make an informed decision about end of life care and who does not have an advance directive, end of life care shall be determined in accordance with the hospital's normal practices for providing end of life care to a person in the community, including, if applicable, consultation with the resident's family, court-appointed guardian, health care power of attorney, etc.
6. The resident or the resident's family, court-appointed guardian, health care power of attorney, etc. shall not be permitted to give consent to treatment or end of life care that is not medically necessary.
7. If there appears to be a need for the appointment of a guardian or the obtaining of a court order with respect to the emergency treatment or end of life care of a hospitalized resident, the Warden, or designee, shall contact the Deputy Commissioner, or designee.
8. The Deputy Commissioner, or designee, may, after conferring with the Regional Medical Director, or designee, and any other person as appropriate, contact the Department's legal representative in the Attorney General's Office to inquire about obtaining the appointment of an emergency guardian, obtaining a court order for involuntary treatment, or taking other appropriate action.

## VIII. PROFESSIONAL STANDARDS

### ACA

- 5-ACI-6C-04 (MANDATORY) Informed consent standards in the jurisdiction are observed and documented for offender care in a language understood by the offender. In the case of minors, the informed consent of a parent, guardian, or a legal custodian applies when required by law. When health care is rendered against the patient's will, it is in accordance with state and federal laws and regulations. Otherwise, any offender may refuse (in writing) medical, dental, and mental health care.**
- 4-ACRS-4C-19 If the facility provides medical treatment, offenders make medical decisions with informed consent. All informed consent standards in the jurisdiction are observed and documented for offender care.**

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