Authority

In accordance with 22 AAC 05.155, the Department will maintain a manual comprised of policies and procedures established by the Commissioner to interpret and implement relevant sections of the Alaska Statutes and 22 AAC.

References

Alaska Statutes

AS 09.55.556

AS 47.12.030 - .100

Court Cases

Korman v. Mallin, 858 P.2d 1145 (Alaska 1993)

Alaska Administrative Code

22 AAC 05.455

Standards for Adult Correctional Institutions; 3rd Edition 1990

3-4372

Standards for Adult Local Detention Facilities; 3rd Edition 1991

3-ALDF-4E-42

Purpose

To establish uniform procedures within the Department for obtaining prisoners' informed consent for proposed medical treatment.

Application

All staff and prisoners.

Definitions

As used in this document, the following definitions shall apply:

A. Health Care Practitioner

Health care practitioners are physicians, dentists, physician's assistants (PA), and advance nurse practitioners (ANP) employed by the Department who are qualified and prepared by the virtue of their education, credentials, and experience to practice in professional health care fields. These individuals have an expanded role in the delivery of health care that is advanced and specialized within their scope of practice.

B. Informed Consent

The agreement by a patient for a treatment, examination, or procedure after the patient receives the material facts about the nature, consequences, and risks of the proposed treatment, examination, or procedure and the alternatives to it. Informed consent must be documented on a written form containing the inmate's signature. The right to refuse treatment is inherent in the concept of informed consent.

C. Inmate Health Staff

Inmate health staff consists of health care practitioners, registered nurses, licensed practical nurses, dental assistants, and mental health clinicians.

D. Material Risks

Material risks are those risks which a reasonable person would need to know about in order to make an informed and intelligent decision about the proposed treatment.

Policy

A. Securing informed consent is the responsibility of the attending health care practitioner. A health care practitioner must obtain a prisoner's informed consent before performing any treatment or non-routine physical or mental health examination or procedure on a prisoner, except in those instances set forth in Procedures D below.

B. Informed consent must be obtained when performing HIV testing. Please refer to Policy 202.03, Blood borne Pathogens, and Policy 818.18, HIV Infection.

C. For invasive procedures where there is some risk to the prisoner, an Informed Consent, Form 807.08A, must be signed and dated by the prisoner at the time of consent and witnessed by a Department staff member. The witness' signature only verifies that the prisoner signed the form.

D. Departmental health care practitioners are not responsible for obtaining informed consent for procedures that will not occur within a correctional facility. When prisoners are sent to physician's offices or hospitals for medical procedures or treatment, it is the responsibility of that health professional or facility to obtain the prisoner's informed consent.

E. A prisoner has the right to refuse treatment. However, a prisoner who refuses health care treatment that the Department or a private practitioner deems necessary must sign Form 807.08B, Informed Waiver of Medical Treatment, releasing the State, Department, Department employees, and health care practitioners from liability for all consequences of obtaining alternate treatment or refusing treatment.

Procedures

A. Explanation of Treatment and Risks

A health care practitioner must explain the procedures, alternatives, and risks of a treatment or procedure to a prisoner before starting any treatment or non-routine examination or procedure that could have a negative side effect, except as provided in section D, below.

1. The health care practitioner must explain to the prisoner in lay terms:
   a. The procedure or treatment;
   b. The nature and severity of the material risks and the likelihood of their occurrence;
   c. The expected benefits;
   d. The consequences of withholding consent; and
   e. Reasonable alternative procedures or treatments, and their risks and benefits. AS 09.55.556; Korman v. Mallin, 858 P.2d 1145 (Alaska 1993).
2. Non-English speaking prisoners
   a. The Department shall provide an interpreter, if needed, for a prisoner who does not understand or speak English.
   b. When an interpreter is used, the name of the interpreter and the date and time shall be included on the Informed Consent Form 807.08A and in the progress notes of the medical record.
3. The health care practitioner need not give the prisoner this explanation when:

a. The health care practitioner does not know of the risk and should not be aware of it in the exercise of ordinary care;

b. The risk not disclosed is too commonly known or is too remote to require disclosure; or

c. Under circumstances set out in Procedures D, below. AS 09.55.556; Korman v. Mallin, 858 P.2d 1145 (Alaska 1993).

B. Informed Consent

1. A prisoner gives informed consent when the prisoner voluntarily agrees to a recommended medical, psychological, or psychiatric treatment after receiving the explanation in section A above from the health care practitioner. This process shall be documented in the progress notes of the prisoner's medical record. The prisoner must sign an Informed Consent Form 807.08A, before receiving any surgical procedure, treatment with a foreseeable risk, or non-routine examination, except as set forth in section D, below.

2. Prisoners must sign the Consent to Test for Human Immunodeficiency Virus (HIV), Form 807.18A, before testing.

3. The health care practitioner shall ensure that Informed Consent Form 807.08A indicates the specific medical procedure to be completed. Abbreviations shall not be used.

4. The prisoner must sign the Informed Consent.

a. If the prisoner is unable to write, an "X" in place of the signature is binding when properly witnessed by two witnesses.

b. Oral consent may be accepted if a prisoner is physically unable to sign the Informed Consent. This is binding when it is properly witnessed by two witnesses and it includes an explanation why the individual is unable to sign.

4. Under AS 47.12., persons under the age of 18 who have been waived to adult status may provide informed consent for medical treatment.

C. Refusing Treatment

1. Informed waiver of medical treatment

The prisoner must complete an Informed Waiver of Medical Treatment Form 807.08B, when the prisoner refuses a recommended treatment. An Inmate Health staff member must witness the prisoner's signature by signing the form. Staff shall write "Patient refuses or is unable to sign" if the prisoner refuses or cannot sign the form. A second staff member must witness the refusal by signing the form.

2. Records

The Informed Waiver of Medical Treatment Form 807.08B shall be filed in the prisoner's medical record. An Inmate Health staff member will document the refusal in the progress notes of the prisoner's medical record.

D. Waiver of Informed Consent

The Department may waive the health care practitioner's duty to obtain a prisoner's informed consent in the following circumstances:

1. An emergency exists that requires immediate medical intervention, i.e., delay of treatment will threaten life or limb;

2. A prisoner does not have the capacity to give consent, as determined by a physician, PA, or ANP in consultation with the Department Psychiatrist or Medical Director; or

3. There is a public health concern that requires immediate medical intervention.

Implementation

This policy and procedure is effective 14 days following the date signed by the Commissioner. Each Manager shall incorporate the contents of this document into local policy and procedure. All local policies and procedures must conform to the contents of this document; any deviation from the contents of this document must be approved in writing by the Division Director.

October 30, 2002
Date

Margaret M. Pugh
Margaret M. Pugh, Commissioner
Department of Corrections

Forms Applicable:
807.08A
807.08B
807.18A