


**STATE OF ALASKA
DEPARTMENT OF CORRECTIONS**



POLICIES & PROCEDURES

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CHAPTER: 807	NUMBER: 807.08	P&P TYPE: Public
TITLE: Informed Consent And Refusal Of Treatment		
APPROVED BY:  Dean R. Williams, Commissioner		DATE: 04/14/17

ATTACHMENTS / FORMS:
(A.) Informed Consent Form.
(B.) Waiver Of Medical Treatment Form.

AUTHORITY / REFERENCES:
22 AAC 05.120-121 AS 33.30.011
22 AAC 05.155 AS 33.30.021
AS 09.55.556 AS 33.30.028
AS 33.05.010 AS 44.28.030
AS 33.16.180
Public Health Service Act, 42 U.S.C. 264 (b).
2014 NCCHC Standards For Health Services In Prisons, [P-I-05].
2014 NCCHC Standards For Health Services In Jails, [J-I-05].

POLICY:

- I. It is the policy of the Department of Corrections (DOC) to have in place uniform procedures in order to ensure prisoner's informed consent for all proposed medical, dental and mental health treatment.
- II. It is the policy of the Department that a prisoner has the right to make an informed decision regarding his / her health care.
- III. It is the policy of the Department that a health care provider must obtain a prisoner's informed consent before performing any non-emergent treatment, non-emergent exam, non-routine physical or examination or non-emergent procedure on the prisoner, except in those instances set forth in Procedures section V of this policy below.
- IV. Written consent is required for invasive or irreversible procedures or treatments to include but not limited to: surgeries; invasive diagnostic tests; dental extractions; use of medications with irreversible side effects; and / or use of psychotropic medications.
- V. Verbal consent may be obtained for non-invasive procedures, non-invasive diagnostic tests, or for the use of medications with reversible side effects.
- VI. It is the policy of the Department that blanket consents for treatment shall not be allowed.
- VII. A prisoner has the right to refuse treatment. However, a prisoner who refuses health care treatment that the Department or a private provider deems necessary must release the State, Department, Department employees, and Departmental medical providers from liability for all consequences of obtaining alternate treatment or refusing treatment, by signing a waiver as outlined in Procedures section IV, below.

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- VIII. By refusing treatment at a particular time, the prisoner does not waive his / her right to subsequent health care.
- IX. Prisoners shall not be punished for refusing treatment even if the medical treatment is considered mandatory and represents a public health matter. In such cases, it is the Department's policy to establish an alternative plan such as isolating the prisoner and providing medical counseling or seeking a court order for treatment.
- X. If care is refused by a prisoner due to a system disincentive such as sick call or medication pass times in conflict with visitation or required programming, a reasonable alternative shall be developed to lessen or eliminate the conflict.
- XI. It is the policy of the Department to ensure that an interpreter is available if needed, so that a non-English speaking prisoner understands the provider's explanation of proposed treatment.

APPLICATION:

This policy and procedure will apply to all Department employees and prisoners.

DEFINITIONS:

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

Health Care Staff:

Health care staff includes: licensed physicians; psychiatrists; psychologists; emergency medical technicians; physician assistants; registered or practical nurses; advanced practice registered nurses; dentists; dental assistants; dental hygienists; optometrists; pharmacists; mental health clinicians; clinical social workers; psychological associates; dispensing opticians; physical therapists; and occupational therapists that provide preventive, curative, promotional or rehabilitative health care services.

Informed Consent:

Informed consent is an agreement by a prisoner to undergo treatment, examination, or a procedure after the prisoner receives facts about the nature, consequences and risks of the proposed treatment, examination or procedure and the alternatives to it as well as the prognosis if action is not undertaken.

Mandatory Health Care Services:

Health care services rendered with or without the permission of the prisoner; the purpose of which is restricted to:

1. The protection of the public health;
2. The protection of the life of a comatose or otherwise compensated prisoner who shall not or cannot give permission;
3. The determination of the potential for infectiousness if any unlawful exchange of body fluids is known to have occurred such as biting, spitting, shared use of needles / drug injections, sexual liaison, sexual intercourse, etc.; and

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4. The detention and treatment of individuals with communicable diseases listed in the Public Health Service Act (42 U.S.C. 264(b)) such as infectious tuberculosis, cholera, hemorrhagic fevers (i.e. Ebola), bacterial meningitis, diphtheria, plague, or severe acute respiratory syndrome.

Material Risks:

Risks which a reasonable person would need to know in order to make an informed and intelligent decision about a proposed treatment, examination or procedure.

Signature(s):

For the purpose of a prisoner's health care record and on other related forms and documents, a valid signature shall include both signatures made by hand and electronically, including digitized versions of a signature. This applies to signatures created by prisoners as well as Department employees and health care staff.

PROCEDURES:

I. Explanation Of Treatment And Risks:

A health care provider 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 an adverse outcome, except as provided in Procedures section II, below. The provider must explain the following 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 postponing or declining treatment; and
- E. Any reasonable alternative procedures or treatments, and their risks and benefits.

II. Exceptions To An Explanation:

The health care provider need not give the prisoner explanation of treatment and risks as outlined in Procedures section I above, if:

- A. A complete and candid disclosure of possible alternatives and consequences might detrimentally affect the physical or psychological well-being of the prisoner. The compelling evidence that a disclosure shall cause real and predictable harm must be documented;
- B. The prisoner has specifically asked that he or she not be told about the risks;
- C. The health care provider does not know of the risk and should not have been aware of it in the exercise of ordinary care; or
- D. Under circumstances set out in Procedures section V, below.

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III. Informed Consent:

- A. A prisoner gives informed consent when he or she voluntarily agrees to undergo a recommended medical, psychological, or psychiatric treatment after receiving the explanation as outlined in Procedures section I from the health care provider. The right to refuse treatment is inherent in this concept.
- B. Informed consent shall be documented using the *Informed Consent Form* (Attachment A), and shall include the prisoner's signature. The *Informed Consent Form* (Attachment A) shall be retained in the prisoner's health care record.
- C. Verbal informed consent shall be documented in the medical chart to include the recommendation and risks discussed.

IV. Refusal Of Treatment:

Except where mandatory health care services are necessary, a prisoner has the right to refuse treatment. Prisoners may not be punished for exercising that right. The following steps shall be followed when a prisoner refuses treatment:

- A. The prisoner must complete a *Waiver Of Medical Treatment Form* (Attachment B), when he or she refuses a recommended treatment.
- B. A health care staff member must witness the prisoner's signature and also sign the form.
- C. When a prisoner refuses or cannot sign the form, staff shall note that on the form and sign the form. Health care staff shall also document the refusal in the prisoner's health care record.
- D. A second staff member must witness the refusal and also sign the form.
- E. The *Waiver Of Medical Treatment Form* (Attachment B) shall be retained in the prisoner's health care record.

V. Waiver Of Informed Consent By Department Medical Staff:

Department medical staff may waive the health care provider's duty to obtain a prisoner's informed consent. Rationale for treatment without consent shall be documented in the prisoner's health care record. The health care provider may request to waive informed consent for the following reasons:

- A. An emergency that requires immediate medical intervention, to include administration of involuntary medication;
- B. When a prisoner does not have the capacity to give consent, as determined by a physician; and / or
- C. For mandatory health care services, as described above in the Definitions section.

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