



KANSAS DEPARTMENT OF CORRECTIONS

	INTERNAL MANAGEMENT POLICY AND PROCEDURE	SECTION NUMBER 10-127D	PAGE NUMBER 1 of 5
		SUBJECT: PROGRAMS AND SERVICES: Consent To or Refusal of Medical Treatment	
Approved By:  Secretary of Corrections		Original Date Issued: 10-15-15	Replaces Version Issued: N/A
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APPLICABILITY:	<input type="checkbox"/> ADULT Operations Only	<input type="checkbox"/> JUVENILE Operations Only	<input checked="" type="checkbox"/> DEPARTMENT-WIDE
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POLICY STATEMENT

Health assessments, treatments, and procedures provided to offenders shall be governed by informed consent practices applicable in the State of Kansas.

DEFINITIONS

Departmental Clinical Health Authority: The physician Regional Medical Director of the agency or organization responsible for the provision of health care services for the KDOC. This position has full clinical autonomy and responsibility for clinical health care issues within the KDOC.

Effective Consent: An offender's consent to health care either expressed or implied; written or verbal.

Facility Administrative Health Authority: The Health Services Administrator responsible for the provision of health care services at a facility. The facility Health Authority works under the direction of the Departmental Clinical Health Authority and the Regional Vice President or designee administratively.

Facility Clinical Health Authority: The site physician Medical Director responsible to the Regional Medical Director for all clinical matters and to the Health Services Administrator for all administrative matters.

Informed Consent: The agreement by an offender to a treatment, examination or procedure after the offender receives the material facts regarding the nature, consequences, risks, and alternatives concerning the proposed treatment, assessment, or procedures.

PROCEDURES

I. ADULT: Obtaining Consent for Treatment and/or Health Services (ACI 4-4397, NCCHC P-I-05)

A. Routine health procedures.

1. Consent to routine health examinations and/or treatment shall be documented by the attending health care staff on a form approved by the Regional Medical Director for the purpose of authorizing routine health and/or dental care. Each offender shall be requested to execute the consent to treatment form when the offender is received into the custody of the Secretary. Once executed, the form need not be executed again for subsequent routine health procedures.

2. Any routine treatment provided shall be documented by the attending physician via the execution of an entry in the offender's health record on a form approved by the Regional Medical Director for the recording of patient notes and physician's orders.
 3. Verbal consent shall be obtained from the offender prior to any routine health examination which is conducted through a pelvic, digital, or other invasive procedure and shall not require the execution of the consent to treatment form. Such consent shall not be required for body cavity searches pursuant to IMPP 12-103.
 - a. If the offender refuses the health examination, he/she shall be asked to sign the health authority's Refusal to Submit to Treatment form (Attachment A) absolving the facility health care staff and Health Care Practitioner from responsibility.
 - b. If an offender refuses treatment and also refuses to sign the appropriate form, the attending health care staff member shall indicate the offender's refusal on the form by entering the phrase "Offender refused to sign" over the offender's signature block, and shall sign and date the form.
 - c. The signature of the health care staff member shall be witnessed by at least one (1) other health care or staff person who heard the offender refuse the examination.
- B. Non-routine or surgical procedures.
1. Offender consent to surgical or non-routine health procedures shall be documented by the offender's execution of the Informed Consent to Health Services form (Attachment B), which authorizes the provision of specific health services.
 - a. The written consent forms required shall become a permanent part of the offender's health record.
 2. Before obtaining the offender's informed consent for non-routine or surgical health procedures, the offender shall be informed of the nature, consequences, risks and alternatives concerning the proposed treatment, examination, or procedure.
 3. The attending physician shall ensure that appropriate documentation is obtained via the execution of the written consent forms required for surgical/non-routine health procedures.
- C. Use of Chemical Restraints
1. Offender consent to treatment shall not be required for the use of chemical restraint(s) when deemed necessary by a physician or psychiatrist because of severe psychological reactions rendering an offender e dangerous to self or others.
 2. If the use of chemical restraints is authorized by a physician, such authorization and treatment must be reviewed by a psychiatrist within four (4) hours. Use of chemical restraints as treatment shall be considered a reportable incident, per IMPP 01-113.
- D. With the exception of the need to provide such immediate treatment as required to preserve life or prevent permanent injury, complete a court ordered evaluation, or restrain a potentially dangerous offender, physicians shall make a reasonable disclosure of the nature and probable consequences of any suggested or recommended treatment to their offender patients.

II. JUVENILE: Obtaining Consent for Treatment and/or Health Services

- A. In cases where the offender is under the age of 16, consent shall be obtained from the offender's parent, guardian, or some adult who has the obligation to care for the offender and make responsible decisions for him/her.

1. All attempts to contact the parent, guardian, or other responsible adult shall be fully documented and retained as a permanent part of the offender's health record.
 2. Pursuant to K.S.A. 38-2347, a minor 16 years of age or older, where no parent or guardian is immediately available, may give consent to the performance and furnishing of hospital, health, or surgical procedures.
- B. The consent for treatment shall be obtained in writing whenever possible.
1. If obtaining written consent is not practical due to time or distance factors, the verbal consent of the offender's parent, guardian, or other responsible adult shall be documented by the person obtaining it.
 - a. The written consent or documentation of verbal consent shall be retained as a permanent part of the offender's health record.
 2. Whoever obtains the consent shall immediately confirm it by a letter to the person giving the consent. The letter shall itemize all disclosures made and state that consent was given by the person who represented themselves as having the authority to give consent, specifying the method in which the consent was communicated (i.e., verbally via telephone, telegram, fax, e-mail, etc.).
 - a. This effort shall be documented in the offender's health record and a copy of the letter attached. The letter shall be sent by registered mail.
 - b. If the person who gave consent comes to the hospital, he/she shall be requested to sign the appropriate consent form(s).

III. Refusal of Treatment (NCCHC P-I-06)

- A. Offenders shall not be allowed to give a blanket refusal to treatment.
1. **ADULT:** Except for such circumstances as are set forth herein, an offender shall have the right to refuse health treatment.
 2. **JUVENILE:** Except for such circumstances as are set forth in Section II., above, an offender's parent, guardian, or other responsible adult shall have the right to refuse health treatment for the offender.
- B. An offender may direct the withholding or withdrawal of life-sustaining procedures in a terminal condition by executing a written "Declaration", per instructions in Attachment C, which substantially complies with K.S.A. 65-28,103(c), declaring the offender's desire for such action.
1. All other provisions of the Natural Death Act, K.S.A. 65-28,101 *et seq.* shall be complied with by the offender and health personnel. Information regarding this declaration shall be provided at intake.
 2. The Health Services Administrator at each facility and the unit teams shall also have the forms available to provide to offenders when requested by an offender. A copy of any form executed by an offender shall be placed in the offender's master file, the health record, and the unit team file.
- C. If an offender refuses health treatment, the following steps shall be taken:
1. The offender shall be asked to sign a form absolving the facility, health care staff and Healthcare Practitioner from responsibility.
 - a. In cases where an offender does not wish to remain in the facility infirmary, the offender shall be asked to sign a document approved by the Regional Medical

Director indicating the offender's desire to leave the infirmary against the Site Medical Director or other Health Care Practitioner's advice.

- (1) An offender's refusal to remain in the facility infirmary shall not require the offender's return to general population housing. The determination of an appropriate alternative housing placement shall be made by the warden/superintendent, in consultation with the Health Services Administrator, including the continuance of housing assignment in the infirmary until it is deemed safe to return the offender to general population.
 - b. In cases where an offender refuses to submit to health treatment recommended by professional health staff, whether routine or non-routine/surgical, the offender shall be asked to sign the "Refusal To Submit To Treatment" form.
2. If an offender refuses treatment, but refuses to sign the appropriate form, the attending staff member or contract health service provider shall indicate the offender's refusal on the form by entering the phrase "Offender refused to sign" over the offender's signature block, and shall sign and date the form.
 - a. The signature of the staff member or contract health care staff shall be witnessed by at least one (1) other health care staff or facility staff person who heard the offender refuse treatment.
3. The facility Legal Counsel shall be consulted in those instances when an offender refuses other than routine health treatment. The Legal Counsel shall advise the warden/superintendent concerning the facility's responsibility regarding the health treatment, including the possibility of seeking a court order to provide the treatment.
 - a. If an offender refuses treatment for suspected or diagnosed infectious and/or communicable diseases, precautions shall be initiated in accordance with the provisions of IMPP 10-126D.
 - b. While an offender's refusal of treatment will not, of itself, result in disciplinary action, the refusal of health treatment for certain diseases and/or conditions may require a management response, in accordance with IMPP 10-126D.
4. In affording the offender's right to refuse health treatment, this policy does not intend to imply that offenders have a right to refuse to comply with the decision of the warden/superintendent and Site Medical Director for placement in a facility infirmary or in restrictive housing for health reasons.
 - a. Even after such placement the offender may refuse health treatment.

IV. Documentation

- A. Each offender's decision to consent to or refuse treatment, other than routine health examinations, shall be documented and shall become a part of the offender's health record.
 1. Offenders who present with a health complaint to the clinic shall be considered to have provided effective consent to receive treatment appropriate to the condition.
- B. Each offender's right to consent to or refuse health treatment shall be thoroughly documented. The treating practitioner should consider an offender's refusal of treatment to determine the consequences of the refusal to the offender's health status.

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish

State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REPORTS REQUIRED

None.

REFERENCES

K.S.A. 38-2347, 65-28,101 *et seq.*, 65-28,103 (c)
IMPP 01-113, 10-126D, 12-103
NCCHC P-I-05, P-I-06
ACI 4-4397

ATTACHMENTS

Attachment	Title of Attachment	Page Total
A	Refusal to Submit to Treatment	1 page
B	Informed Consent to Health Services	1 page
C	Instructions/Declaration (Withholding or Withdrawal of Life-Sustaining Procedures)	2 pages

REFUSAL TO SUBMIT TO TREATMENT

Date: _____ Time: _____ A.M.
P.M.

I have been advised by Health Staff _____

that it is necessary for me to undergo the following treatment: _____

(Describe Operation or Treatment)

The effect and nature of this treatment have been explained to me.

Although my failure to follow the advice I have received may seriously imperil my life or health, I nevertheless refuse to submit to the recommended treatment. I assume the risks and consequences involved and release

the above-named Health Personnel, the _____,
(Name of Facility)

and its agents and employees from any liability.

Offender: _____ Date: _____

Witness: _____ Date: _____

Witness: _____ Date: _____

Offender Name (last, first, middle)	DOC#	DOB	R/S	FAC

Informed Consent to Health Services

Inmate's Name: _____

Date of Birth: _____ Social Security No.: _____

Date: _____ Time: _____ A.M.
P.M.

I hereby authorize KDOC's Contracted Health Care Provider and _____,
his/her assistant(s) or designee(s) to treat me as is necessary in his judgment.

The procedure(s) _____, necessary to treat my condition, has been
fully explained to me by HCP _____ and I understand the nature of, and
risks associated with, this procedure(s). Briefly stated, they are: (Benefits) _____

(Risks) _____

I am aware that the practice of the health sciences is not exact and I acknowledge that no guarantees have been made to me as to the results of this procedure(s). Alternate treatment methods and their consequences as well as the risks of refusing the described treatment(s) (if applicable) have been fully explained to me.

(Signature of Offender) (Witness)

(Signature and Title of Provider) (Witness)

Offender Name (last, first, middle)	DOC#	DOB	R/S	FAC
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INSTRUCTIONS

LIVING WILL

Any adult person may execute a declaration directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. This declaration shall be:

- 1) In writing;
- 2) Signed by the person making the declaration, or by another person in the declarant's presence and by the declarant's expressed direction;
- 3) Dated;
- 4) Signed in the presence of two (2) or more witnesses at least eighteen (18) years of age neither of whom shall be:
 - The person who signed the declaration on behalf of and at the direction of the person making the declaration;
 - Related to the declarant by blood or marriage;
 - Entitled to any portion of the estate of the declarant according to the laws of intestate succession of this state or under any will of the declarant or codicil thereto;
 - Directly responsible for declarant's health care.

Employees of the Department of Corrections or any contractor providing health care to offenders may not sign the declaration as a witness. Witnesses may be volunteers, employees of contractors not involved in providing health care to offenders, Legal Services for Prisoners, Inc. staff, visitors except as specified above or other offenders.

The Declaration may be revoked:

- 1) By being obliterated, burnt, torn, or otherwise destroyed or defaced in a manner indicating intent to cancel;
- 2) By a written revocation of the declaration signed and dated by the declarant or person acting at the direction of the declarant; or
- 3) By a verbal expression of the intent to revoke the Declaration, in the presence of a witness eighteen (18) years of age or older who signs and dates a writing confirming that such expression of intent was made.

The declaration of a qualified patient diagnosed as pregnant by the attending physician shall have no effect during the course of the qualified patient's pregnancy.

The provisions of K.S.A. 65-28,101, et seq., and amendment thereto, shall be complied with concerning any Declaration.

A copy of the executed form shall be:

- 1) Placed in the offender's health record;
- 2) Placed in the offender's official facility file;
- 3) Placed in the offender's unit team file; and,
- 4) Given to the offender.

DECLARATION

(Directing the Withholding or Withdrawal of Life-Sustaining Procedures)

Declaration made this _____ day of _____ (month, year).

I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two (2) physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any health procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse health or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed: _____

City, County and State of Residence _____

The declarant has been personally known to me and I believe him or her to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of declarant or codicil thereto, or directly financially responsible for declarant's health care.

Witness: _____

Witness: _____