STATE OF OHIO

DEPARTMENT OF REHABILITATION AND CORRECTION

SUBJECT: **Consent to and Refusal of Medical Treatment**	Page 1 of 5 NUMBER: 68-MED-24
RULE/CODE REFERENCE: ORC 5120.01; ORC 5120.38.	SUPERSEDES: 68-MED-24 dated 10/13/10
RELATED ACA STANDARDS: 4-4395; 4-4397	EFFECTIVE DATE: September 3, 2014
	APPROVED:

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage all institutions and divisions of the Department and to establish such rules and regulations as he prescribes.

II. PURPOSE

The purpose of this policy is to establish standard procedural guidelines for the delivery of health care services under the jurisdiction of the Ohio Department of Rehabilitation and Correction when an informed consent to or refusal of medical treatment is involved.

III. APPLICABILITY

This policy shall be applicable to all persons employed by or under contract with the Ohio Department of Rehabilitation and Correction and all offenders incarcerated in institutions operated by the Department.

IV. DEFINITIONS

Advanced Level Provider (ALP) - A clinician functioning as a primary health care provider to include physicians, physician assistants, certified nurse practitioners, and dentists.

Authorized Independently Licensed Mental Health Professional (AILMHP) - Psychiatrists, Psychologists, Advance Practice Nurse - Mental Health (APN-MH), Professional Clinical Counselors (PCC), and Licensed Independent Social Workers, who by virtue of their training and experience, are qualified to provide mental health care and have been specifically assigned identified tasks in this policy.

Capacity - The functional ability of the offender to respond to information and questions presented to him/her about health care service needs.

Chief Medical Officer (CMO) - The physician responsible for the day-to-day medical care of offenders at the institution level. The Chief Medical Officer is the ultimate medical authority at the institution.

Next of Kin - A person designated by consent of the inmate to assist in decisions regarding the inmate's medical care in the event the inmate does not have the capacity to make his/her own medical decisions. By nature of this designation, the Next of Kin will also be entitled to receive detailed medical information regarding the inmate in order to provide the above-described assistance.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to provide procedural guidelines which clarify the medical/legal staff responsibilities involved in the medical treatment of inmates.

VI. PROCEDURES

A. Informed Consent for Inmate Patients with Mental Capacity

1. It is the responsibility of the Advanced Level Provider (ALP) recommending surgery or any invasive procedure to obtain an informed consent from the patient involved before the procedure is performed. The Consent to Treatment form (DRC5026) shall be used to obtain the consent.

2. When the ALP obtains informed consent, he/she must first instruct the patient about the treatment to be given, the proposed benefits of treatment, the risks involved, and any reasonable alternative treatment that may be available. All informed consents must be witnessed by another staff member, who must sign the consent form as a witness.

3. There are circumstances in which medical care may be given without prior informed consent. Such circumstances may include:

   a. A life-threatening situation that requires immediate medical intervention;

   b. Emergency care of patients who have been determined to be incompetent to make informed decisions about their medical care;

   c. Certain public health matters, such as when a patient has a contagious disease or otherwise represents a threat to those in the immediate area.

4. When the ALP starts treatment without first obtaining informed consent, he/she must exercise sound medical judgment and shall document his/her assessment, the treatment delivered, and the rationale for proceeding without prior consent by the patient.

B. Consent Procedures for Inmate Patients without Mental Capacity

1. In the event the ALP has concerns regarding a patient's capacity to make informed decisions about his/her medical care, the ALP shall refer the patient for a Healthcare Capacity Assessment using the Consult to Mental Health for Evaluation of Capacity to Make Health Care Decisions form (DRC5503) following procedures outlined in Department Policy 67-MNH-30, Mental Health Assessment Activities.

2. If the Authorized Independently Licensed Mental Health Professional (AILMHP) determines that the patient does not have the capacity to make informed decisions about his/her medical care, then the ALP and/or Health Care Administrator (HCA) shall determine how medical decisions will be made for the patient using the procedure below.

3. If the patient does not have a Durable Power of Attorney for Health Care on file as described in Department Policy 69-OCH-03, Advanced Directives for Health Care, the ALP shall request assistance from the patient's assigned case manager and the institution's HCA to notify the Next of Kin of the need for assistance in decisions regarding the patient's medical care.

4. The Next of Kin shall be advised by the ALP or HCA that the patient is not currently able to make medical treatment decisions. The Next of Kin shall be advised that the ALP is seeking assistance in making medical decisions for the patient.

   a. The ALP or the Health Care Administrator shall explain the patient's condition and the available reasonable options for medical treatment and request input from the Next of Kin in the decision-making process.

   b. The Next of Kin shall be advised that due to the patient's status as an inmate, all final medical decisions shall be made by the Managing Officer.

   c. The Next of Kin shall be advised of the final medical decision. In the event the medical decision conflicts with the input provided by the Next of Kin, the Managing Officer shall provide an explanation to the Next of Kin as to why an alternative course of treatment was chosen.

5. In the event a Next of Kin cannot be located to make decisions on behalf of the patient, the Managing Officer shall be notified. The Managing Officer shall consult with the ALP to obtain a medical opinion on the best course of treatment for the patient. The Managing Officer shall then make appropriate medical decisions on behalf of the patient.

C. Refusal of Medical Treatment by Inmate Patients with Mental Capacity

1. A patient may, at his/her own discretion, refuse medical treatment.

   a. This refusal shall be documented in writing on the Release of Responsibility Form (DRC5025) or the Refusal of Medication Form (DRC5027).

   b. The following information must be included on the release:

      i. The nature of the condition for which the evaluation or treatment is offered.
      ii. The treatment being prescribed.
      iii. The potential consequences of refusing the treatment.

c. If the patient refuses to sign, two staff witnesses may attest that the patient was given the information regarding the proposed treatment and may sign the release form stating that the-patient "refused to sign".

2. Health care staff shall inform patients who refuse treatment that they continue to have the right to subsequent health care and may continue to access health care in the usual manner, regardless of past refusals.

D. Forced Medical Treatment to Avoid Imminent Substantial Bodily Harm or Preventable Risk of Contagion

1. If, in the opinion of the Chief Medical Officer (CMO) of the institution or attending ALP, refusal of the recommended treatment would likely result in imminent substantial bodily harm to the patient or a preventable risk of contagion to others, medical staff shall make an attempt to administer the treatment without force.

2. In the event attempts to administer the treatment without force are unsuccessful, the CMO shall notify the Managing Officer of the institution of the need to administer medical treatment without consent.

3. After consultation with the CMO, the Managing Officer shall also make reasonable attempts to find a less restrictive alternative, which includes resolving any administrative issues that exist. The Managing Officer shall advise the patient that continued refusal will lead to the administration of medical treatment without consent and by force.

4. In the event the patient claims a religious objection to treatment, the Managing Officer shall consult with Religious Services staff to ensure that the inmate's religion does not preclude the type of treatment proposed by the CMO.

5. In the event less restrictive methods are unsuccessful, the Managing Officer shall notify the Chief of the Bureau of Medical Services.

   a. The Chief of the Bureau of Medical Services shall jointly consult with the Medical Director/designee of the Department and counsel from the Department's Division of Legal Services. This panel shall make a recommendation as appropriate to the condition and circumstances presented.

   b. The panel's recommendation shall be communicated to the Managing Officer and to the appropriate Regional Director in writing.

6. If the panel's recommendation is to administer medical treatment without consent, the Managing Officer shall make a final determination as to whether the physician's order of the CMO shall be carried out without consent.

7. Administration of medical treatment by force:

   a. Shall be considered a planned use of force;
   b. Shall be carried out consistent with the guidelines set forth in Department Policies 63-UOF-01, Use of Force; 63-UOF-04, Physically Immobilizing Restraints; and 310-SEC-29, Cell Extractions; and,
   c. Shall include continuous consultation with medical staff.

8. In the event the patient has a highly contagious condition that could jeopardize staff through exposure to blood or other bodily fluids during administration of treatment by force, the Department's interest in protecting the safety of staff outweighs the interest in administering medical treatment to the inmate by force. In such cases, forced medical treatment should not be carried out until the CMO has been consulted about the safest method of enforcing the required treatment.

Related Department Forms

Release of Responsibility Form	DRC5025
Consent to Treatment	DRC5026
Refusal of Medication Form	DRC5027
Consult to Mental Health for Evaluation of Capacity to Make Health Care Decisions	DRC5503