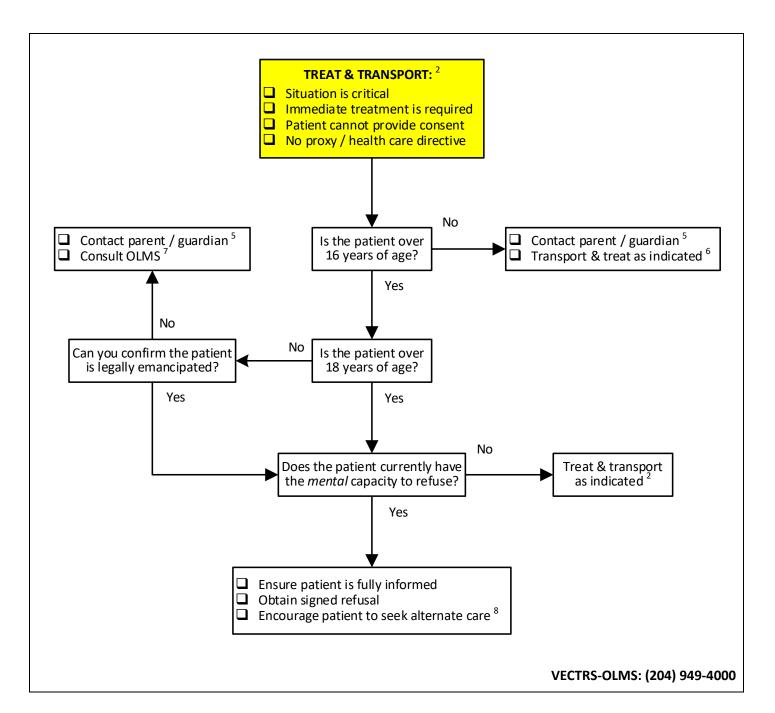
Shared health		A05 - CONSEN	IT & REFUSAL
Soins communs Manitoba	Version date: 2025-0	3-05	Effective date: 2025-04-30 (07:00)
EMR / PCF	P / ICP / ACP		ALL AGES



NOTES

 Patients have the right to make their own decisions about their health care, including the right to refuse treatment and ambulance transport. Consent to treatment and transport cannot be assumed simply by calling 911.

Appendix A outlines some principles of consent that all paramedics should be aware of.

- 2. Treat and transport under the principle of *implied consent* if:
 - a. The patient's condition and time-sensitive
 - b. Immediate treatment is required to save life, limb, or vital function.
 - c. The patient cannot provide consent
 - d. There is no substitute decision maker (proxy) readily available.
 - e. There is not health care directive indicating the patient's goals of care.
- 3. Refusals are a potentially high-risk situation. Paramedics may consult on-line medical support (OLMS) at any time. Complete and appropriate documentation of the consent / refusal discussion is essential.

A refusal that is obtained by influence, deception, omission, concealment, or coercion is generally not upheld, regardless that the patient has signed a release.

- 4. Paramedics will transport all patients from primary response calls, except when:
 - a. The patient or their proxy withholds consent (makes a valid refusal).
 - b. There is a Shared Health EMS treat and release protocol that allows for treatment without transporting.
 - c. A qualified health care provider maintains responsibility for the patient's care. 10
- 5. Paramedics should make reasonable efforts to contact the parent or guardian of any patient under the age of 18 years, except where:
 - a. The situation is critical, and time is of the essence.
 - b. There is reasonable concern for the safety of the patient, such as with suspected abuse or neglect by the parent or guardian.
 - c. It can be confirmed that the patient is legally emancipated.
- 6. <u>If a parent or guardian cannot be reached, patients under 16 years of age must be treated as clinically indicated and transported to a health care facility</u>. Persons under 16 years of age (unless legally emancipated) do not have the legal capacity to make their own health care decisions.
- 7. <u>If a parent or guardian cannot be reached, paramedics must consult OLMS for patients between the ages of 16 and 18 years</u>. The physician can assist with determining the best course of action if a minor patient is refusing treatment or transport.
- 8. Do not leaving medications or devices with a patient.
- 9. If requested by law enforcement or any other agency to provide *medical clearance*, paramedics must advise that the patient should be transported to a health care facility for a medical assessment. While law enforcement has the authority to take an individual into custody and maintain custody of an individual, they cannot provide consent or refusal on behalf of a patient.
- 10. In the event of a request from a health care facility such as a personal care for a *lift-assist*, paramedics must independently assess the patient and determine if there is any need for transport to a hospital. If transport is not indicated, a qualified health care provider at the facility must assume ongoing responsibility for the patient.

11. In the event of a request from a member of the public for assistance in a private home, the patient or their proxy must be advised to be that they should be transported to a health care facility for a medical assessment.

	LINKS
• None	

APPROV	ED BY
Bytherel	ffmennt.
EMS Medical Director	EMS Associate Medical Director

VERSION CHANGES (refer to X01 for change tracking)

• Reference H appended for ease of access

APPENDIX A: PRINCIPLES OF CONSENT

PREAMBLE

Every adult in Manitoba has the right and is presumed to have the legal capacity to make decisions around their own health care. Consent is required for any medical intervention, including transport by EMS to hospital. The individual's right to agree to, or refuse, medical treatment can only be removed by the Court.

Minors between the ages of 16 and 18 years are presumed have the right to make some of their own health care decisions. With few exceptions, those under 16 years of age do not (section B).

Individuals can assign the responsibility for their own health care decisions to another adult (section C). Health care providers cannot consent on behalf of a patient. However, in an emergency when the patient or their proxy cannot provide consent, the principle of implied consent can be applied (sections D).

An involuntary patient in a mental health facility retains the right to make health care decisions in the absence of an order to the contrary. Similarly, an individual in custody or under incarceration always retains the right to make their own health care decisions (section F).

SECTION A - PREREQUSITES

There are four prerequisites to a valid consent at law:

1. CAPACITY:

Making personal health care decisions requires having both the legal and mental capacity to do so.

In Manitoba every individual over 18 years of age is presumed to have the **legal capacity** to make their own decisions about their health care, unless there has been a legal determination to the contrary.

An emancipated minor is an individual under age 18 years of age who has been declared by the Court to have the same legal rights (and thus legal capacity) as an adult. Individuals between the ages of 16 and 18 are presumed to have the legal capacity to make some of their own health care decisions, though one cannot presume that they have the requisite mental capacity on the basis of age alone.

Under normal circumstances an adult in Manitoba is presumed to have the requisite **mental capacity** to make health care decisions in the absence of information to suggest otherwise. Mental capacity may be temporarily lacking such as with intoxication, delirium, or psychosis. Or it may be permanently lost such as with dementia or absent with developmental delay. Determining an individual's mental capacity is complex and is usually not possible in the typical 911 encounter.

2. INFORMED:

For a health care decision to be properly informed, a discussion about the nature, risks, and benefits of an intervention, and any alternatives to the intervention must take place. The information must be presented in plain language and the health care provider must ensure that it is understood.

3. VOLUNTARY:

Paramedics must always act in good faith and in the best interests of the patient, without regard for personal gain or convenience. Consent (or refusal) that is obtained by influence, deception, omission, concealment, or coercion is generally not upheld, even when the patient has signed a release.

4. SPECIFIC:

Consent must be specific to both the current circumstances, the proposed treatment and the individual administering it. Calling 911 does not indicate tacit agreement for treatment or transport.

SECTION B - CONSENT FROM MINORS

MATURE MINOR:

The principle of mature minor allows that some individuals (generally between 16 and 18 years of age) are able to make some (but not necessarily all) of their own health care decisions. In Manitoba it is not clearly defined by legislation, its understanding is vague, and its application by health care providers is often inconsistent.

It is not simply based of chronological age. To satisfy the test of a mature minor, a careful evaluation of the individual's intellectual and emotional maturity, lifestyle, beliefs, and family relationships is required. This is rarely possible within the constraints of a 911 situation.

As well, it does not apply to all decisions, but is specific to the gravity of the situation. A 16-year-old can usually receive birth control without parental consent, but may not be able to refuse a life saving amputation for cancer without parental input. The same goes for refusing transport with obvious injuries from a major motor vehicle collision.

All efforts should be made to obtain parental / guardian consent. If unable to reach them, call the Virtual Emergency Care & Transport Resources Service (VECTRS) and consult on line medical support (OLMS consultation.

EMANCIPATED MINOR:

Some individuals between 16 and 18 years of age may be deemed by the Courts to be emancipated. This means that they are legally free from the control of a parent or legal guardian, and the parent or legal guardian is free from responsibility for them. Emancipated minors can legally consent or refuse medical treatment. However, they cannot act as a substitute decision maker for another individual.

SECTION C - CONSENT WHEN THE PATIENT CANNOT COMMUNICATE

HEALTH CARE DIRECTIVE:

A health care directive (example 1), also referred to as living will, allows an individual to document instructions about the treatments they would accept or refuse in the event that they become unable to speak for themselves. Dedicated forms are widely available, but a directive does not have to be a formal document. It can be any text which is signed and dated by the patient. The directive may sometimes identify an individual to assist with health care decision making. The directions expressed in a health care directive are legally binding on health care providers.

A paramedic who follows what they reasonably believe to be the patient's directions regarding care and acts in the best interests of the patient is usually protected from culpability. Paramedics are not obliged to seek out a health care directive nor expected to determine its validity, but should make reasonable efforts to determine if a patient has one. Individuals often include it in their emergency response information kit (ERIK).

ADVANCE CARE PLAN (ACP):

In most Manitoba hospitals and personal care homes an advanced care plan (example 2) is a document used to convey a patient's goals of care in a consistent and easily-recognizable fashion. It is usually filled out by a patient and health care provider together at or shortly after admission. Though not legally binding, in the absence of a directive or substitute decision-maker, a paramedic may reasonably assume that it represents the patient's most recent wishes.

SUBSTITUTE DECISION-MAKER:

A competent patient may designate in writing that an individual act as their substitute decision-maker, also known as health care proxy. In the absence of a written one, a patient may make the designation verbally. A minor person 9even if emancipated) cannot be a health care proxy. The proxy is required to act in accordance with a person's directions and make decisions based on their knowledge of the patient's previous expressions, personal beliefs, etc.

In the absence of any such designation a competent adult may act as a proxy in a critical situation, according to the following legally established hierarchy: spouse or partner \rightarrow parent with primary care & control \rightarrow parent with legal access \rightarrow adult offspring \rightarrow adult sibling \rightarrow other adult first-degree relative.

If some situations, the Court may designate an individual to be a health care proxy. This is most commonly a family member. If the patient has no family, the Court may place them under the guardianship of a Public Trustee.

POWER OF ATTORNEY:

Contrary to common belief, power of attorney does not automatically extend to health care decisions. Power-of-attorney is the Court-granted authority to manage another individual's affairs when they are deemed not competent to do so.

Although the terms are often used interchangeably, competency is a legal determination made by the Court, while capacity is a medical term. An individual who has relinquished power of attorney may still retain the mental capacity to make their own health care decisions, or may appoint another individual to act as their proxy for health care matters.

SECTION D - IMPLIED CONSENT

In the absence of a health care directive or substitute decision maker, the common law principle of implied consent presumes that the average reasonable person in a medical emergency would agree to an intervention advised by a duly qualified health care provider in order to preserve their life, limb, or vital function. With a minor patient it is presumed that a reasonable parent or guardian under the same circumstances would also agree.

Health care providers acting reasonably and in the best interests of the patient would not be culpable, even if their actions were in contradiction to the patient's health care preferences unbeknownst at the time of intervention.

SECTION D - CONSENT UNDER THE MENTAL HEALTH ACT

The Mental Health Act is legislation that enables the involuntary detention, transport, assessment, and admission of a person who lacks the mental capacity to provide informed consent by reason of a mental disorder.

An *Order for Involuntary Medical Examination* (form 2) or an *Application by Physician for Involuntary Psychiatric Examination* (form 4) authorize a police officer, peace officer or qualified person (as defined by the Mental Health Act to detain and transport an individual without their consent.

Under certain conditions a person can be admitted into a mental health facility without consent. An *Involuntary Admission Certificate* (form 6) or *Renewal Certificate* (form 7) completed by a qualified psychiatrist allows for detention of the patient.

Forms 2, 4, 6 and 7 allow for involuntary detention, but not treatment without consent. A *Certificate of Incompetence to Make Treatment Decisions* (form 9) completed by other than the patient's own psychiatrist is required to administer medical care against an individual's wishes. In the absence of a valid form 9, consent is required for any medical intervention performed by a paramedic.

However, the principle of implied consent can be assumed in a critical situation to save life, limb, or vital function.

SECTION E - CONSENT UNDER CUSTODY OR INCARCERATION

Individuals being detained by local law enforcement, including those detained under the Intoxicated Person Detention Act (IPDA), and individuals in the custody of Correctional Services Canada (CSC) retain the right to consent to or refuse medical intervention. Neither police nor corrections officers can provide substitute consent. The principle of implied consent can again be assumed in an emergency.

EXAMPLE 1:

Health Care Directi Please type or print legibly	
This is the Health Care Directive of	
Name	
	City
rovince Postal Code	Telephone ()
Part 1 – Designation of a Health Care	Proxy Part 2 - Treatment tions
You may name one or more persons who will have the make decisions about your medical treatment when the ability to make those decisions yourself. If you do so name a proxy, you may skip this part. Thereby designate the following person(s) as my Care Proxy:	he power In this part, you may se medical treatment that you circumstances in which you treatment. RF MBER - met with the receive that instructions can only be carried instructions can only be carried.
Proxy 1	
Name	
Address	
City	
Province Postal Code	- - - ₋ - - -
Telephone ()	3 - Ir "Date
Proxy 2	ou must due this Health Care Directive.
Name	o witness
Address	znature_
Address	tte
City.	
Province Postal de	you are unable to sign yourself, a substitute may sign
Telephone (on your behalf. The substitute must sign in your presence and in the presence of a witness. The proxy or the proxy's
	spouse cannot be the substitute or witness.
(Check ✓ one choice an f se and "jointly" please ver fe).	a leely"
	Name of substitute:
If I have named more t o proxy	Address
My Health Care hay make medical deci	Signature
my behalf when he capacity to do so for i	
(check 🗸 one choice 🧊 g):	
→ With no restrictions	Name of witness:
☐ With restrictions as follows:	Address
	Signature
	Date

Consecutively: The second proxy would be contacted if the first is not available or is unwilling to make the required decision at the required time.

Jointly: The first proxy and second proxy would act together on your behalf.

EXAMPLE 2:

				R.CS.CC.007
PRAIRI			Client Health Record Number	
MOUNT			Client Surname	
HEALTI	H		Given Name	
			Date of Birth	
ADVANCE CARE PLA	NNING		Gender	
GOALS OF CARE			MHSC	
PMH Advance Care Plannin	g Policy		Address	
☐ Is there an existing Healt				No □ Yes
(If yes, it shall guide further discus	ssions as an indic	cation of the Client's wis	hes at the time of writing -	Please attach a copy)
Advance Care Planning (ACP) that needs to occur at any tim form is used to record agreed and/or atternate decision make treatment/procedural/investign	e when treatmen upon goals of ca er about the nation ation options, an	nt options and goals of are reached through the are of the individual's and expected benefits of	of care are being consider of and complete ACP discurrent condition, progno- current condition, progno- or burdens of those option	ered or revisited. This cussions with the client sis,
GOALS OF CARE (Check to				
M - Medical Care - Gos consensus is that the investigations/inter R - Resuscitation - Gos consensus is that the	alty of life exclu- als of care and in the client may be ventions that car als of care and in the client may be	ding attempted resus interventions are for or ensitt from, and is ac- in be offered excluding interventions are for ensitt from, and is ac-	citation. care and control of the cl capting of, any appropria g attempted resuscitatio	icnt's condition. The te n. icnt's condition. The te n. icnt's condition. The te
If the required care is not available and are alternate facility?				
Indicate all individuals who pa	articinated in on	als of care discussion	o(s) by checking appropri	
☐ Client	Print Name:			iaic box(ca).
☐ Family Member	Print Name: _			
☐ Alternate Decision Maker	Print Name: _		Signature:	
☐ Health Care Provider	Print Name: _		Signature:	
Document other participants (i. wishes and/or delails of discuss				
Name & Designation of Health Care	Provider	Signature of Health Co (Physician's signature	re Provider is required when patient is a c	yyyyimmedd ient of the Public Trustee)
The goals of care were reviewe	d with the client	and/or alternate decis	ion maker and no change	to the form is required.
Name & Designation of Health Care Provider		Signature of Health Care Provider (Physician's signature is required when patient is a client of the Public Trustee)		
Name & Designation of Health Care	Provider	Signature of Health Ca (Physician's signature	re Provider is required when patient is a o	yyyymmidd ient of the Public Trustee)
Name & Designation of Health Care Name & Designation of Health Care		(Physician's signature Signature of Health Ca	is required when patient is a of re Provider	yyyytmmnidd
Name & Designation of Health Care	Provider	(Physician's signature Signature of Health Ca (Physician's signature	is required when patient is a of	ient of the Public Trustee) yyyyimmidd ient of the Public Trustee)
Name & Designation of Health Care If review results in	Provider	(Physician's signature Signature of Health Ca (Physician's signature to the Client Goals of	is required when patient is a of re Provider is required when patient is a ci	ient of the Public Trustee) yyyyimmedd ient of the Public Trustee) be completed.
Name & Designation of Health Care If review results in	Provider	(Physician's signature Signature of Health Ca (Physician's signature to the Client Goals of	is required when patient is a of re Provider is required when patient is a c Care, a new form must	ient of the Public Trustee) yyyyimmedd ient of the Public Trustee) be completed.