

CVS POLICY & PROCEDURE MANUAL

Policy Area: **Service Delivery**

Policy # & Name: **5.12 Health Care & Health Care Consent**

Group: All Staff, Volunteers

Purpose:

To ensure staff are familiar with the Acts surrounding health care and health care consent and their role in supporting individuals through the process.

Policy Statement:

All staff involved in supporting individuals with health care a familiar with the Acts governing Health Care and Adult Guardianship. In addition, CVS procedures as outlined in this Policy are diligently followed.

Policy Requirements:

Documentation of all health care visits is recorded as outlined in the procedures attached.

CVS Residential Services staff work in conjunction with the resident, his / her family members, doctor, other medical professionals and the Health Services for Community Living Nurse or Ministry for Children and Families Services for Community Living Nurse in making health care recommendations.

CVS staff may also be included in an individual's support team regarding the resident's health care decisions.

Health care providers (i.e.: HSCL Nurse, psychiatrist, physician) have the authority to determine that the resident is not capable of giving his or her informed consent for health care. This determination is usually made with the assistance of the resident's family members, friends and / or support staff.

If a resident is not able to give informed consent, a Temporary Substitute Decision-Maker will be given the authority to consent to recommended treatment or procedures on the adult's behalf. The TSDM should be a family member.

If the resident has no family members available to become a TSDM, the health care provider must contact the Office of the Public Guardian and Trustee (OPGT) to appoint a TSDM. This appointment is made regardless of whether or not it is a minor or major health care issue.

In most cases, the OPGT will appoint a TSDM as recommended by the residents support team (i.e.: the health care provider, physician, support staff). The appointment of a TSDM is valid for 21 days.

When recommending an individual as a TSDM to the OPGT, the resident's support team should seek out friends and / or advocates as first choice for a TSDM. (Specifically, the person being recommended as the TSDM should be someone who is not being paid in any capacity to support the individual, either in his / her home or day program.)

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Once the team has decided on a TSDM and the person has agreed to consent to health care on behalf of the resident, the health care provider (or designate) records the information on a Temporary Substitute Decision-Maker form (SDA 5.12.C), calls and then faxes the relevant information to the OPTG for authorization. Phone: 604-660-4444, Fax: 604-660-4456. A summary of the legislation underlying this policy is attached (Adult Guardianship Legislation). All staff are familiar with their role as it pertains to supporting clients in a hospital environment. Staff's role is clearly defined in the procedures attached.

Policy Audit: March Annually

Date Issued: March 2004

Date Revised: March 2005

Position

Responsible: Executive Director, Health & Safety Committee

References:

- ☞ *Adult Guardianship Act* (summary attached)
- ☞ *Health Care (Consent) & Care Facility (Admissions) Act* (summary attached)
- ☞ Documentation of Health Care Practitioner Visits (attached)
- ☞ CVS Staff's Role in Supporting Individuals in the Hospital Procedures (attached)
- ☞ SDA 5.12.A – Health Care Appointment Information form
- ☞ SDA 5.12.B – Summary of Health Care & Professional Appointments
- ☞ SDA 5.12.C – Temporary Substitute Decision Makers (TSDM)

Documentation Of Medical/Dental/Health Practitioner Visits

All medical dental or health related appoints must be documented by staff, using the Health Care Appointment Information form (SDA 5.12.A).

Staff fills in the top section. Enter the name of the practitioner, (medical doctor or other professional) on the line labeled: 'Practitioner'. Under 'Reason for Appointment', list all the reasons for the appointment and all the concerns prior to the appointment time. Make a copy of this form, and file it in the client's binder. This copy remains in the binder until it is replaced with the fully completed form. It is used to track the process.

The original form is taken to the appointment. The practitioner completes the second and third boxes under 'Results of Office Visit', including 'Diagnosis' and 'Plan', and signs at the bottom of the form.

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Using the back of the form, the staff accompanying the client should add his/her comments - outlining his/her understanding of the information related by the practitioner, and any other information that may be useful.

The staff person ensures the House Supervisor / Program Coordinator has reviewed the form. The fully completed form is filed in the client's binder and recorded in the Summary of Health Care & Professional Appointments (SDA 5.12.B). A copy of the completed Health Care Appointment Information form is submitted to the Program Manager at the Ridgeway office. Once reviewed, the Program Manager will submit the form to the clients file.

The House Supervisor / Program Coordinator follows through by ensuring treatment plans are implemented and documented.

CVS Staff's Role in Supporting Individuals in Hospital

The purpose of this policy is to clearly delineate the role of CVS staff as related to the nursing care responsibilities for a patient admitted to the Hospital.

Hospital nursing staff are responsible for all aspects of care as for any other patient in hospital, such as:

- ? vital signs
- ? medications and intravenous
- ? tube feedings
- ? monitoring intake and output (shift totaling and transfer to graphic record)
- ? changing dressings
- ? documentation of nursing care provided as per NISS guidelines
- ? mechanical lifts
- ? physician liaison

CVS staff, when directed to support individuals in hospital, may provide the following aspects of care:

- ? simple personal care (bed bath, turning / positioning and skin care)
- ? application of non-prescription ointments
- ? feeding (not tube feeding)
- ? assisting with toileting (excluding enemas or emptying foley catheter bags)
- ? psycho-social support
- ? assisting nursing staff with transfers, as per ordered level of mobility
- ? advocacy
- ? assisting with medication administration under DIRECT supervision of RN
- ? notations on intake / output record

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- ? flow sheet notations as required (i.e., sleep chart, bowel record)
- ? liaison with HSCL Nurse

Adult Guardianship Legislation

British Columbia's new adult guardianship legislation is made up of four separate Acts:

- ? The Representation Agreement Act
- ? The Health Care (Consent) and Care Facility (Admissions) Act
- ? The Adult Guardianship Act
- ? The Public Guardian and Trustee Act.

These four Acts work together to create a comprehensive and integrated system of support and assistance for those adults who want or need help in making decisions about their health and personal care, financial or legal affairs.

Understanding the guiding principals of the Act is critical for those in support of vulnerable adults:

- ? Adults are entitled to live in the manner they wish and to accept or refuse the support, assistance or protection of others, provided they are capable of making such decisions and provided they do not cause harm to others.
- ? Adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their assets.
- ? Requests should not be made to the court for the appointment of decision-makers or guardians -- and they should not be appointed -- unless alternatives such as the provision of support and assistance have been tried or carefully considered.

The foundation for the four components of the Act entrenches the notion of capability, respect and rights for all adults.

CVS staff supporting individuals with developmental disabilities, either in their homes or in daytime programs, are required to understand their role as it applies to health care, within the context of the new law. The following page contains relevant information regarding *Health Care (Consent)* and CVS's policy regarding staff's role in assisting and individual in care with health care decisions.

Health Care (Consent)

When an adult requires health care but is unable to make an informed decision about a particular treatment or procedure, it is common practice for the adult's doctor to ask a family member to consent.

British Columbia's new *Health Care (Consent) and Care Facility (Admission) Act* sets out in law the practice of having a **Temporary Substitute Decision-Maker (TDSM)** -- such as a spouse, adult child or other relative -- consent to health care when the adult is unable to do so.

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The Act confirms the right of a capable adult to give or refuse consent to health care, and outlines specific procedures for **health care providers** to follow to obtain substitute consent when an adult is not capable of providing "informed consent".

The Act defines a health care provider as a person who, under a prescribed Act, is licensed, certified or registered to provide health care in BC, such as the Health Services for Community Living Nurse, or the Ministry of Children and Families Services for Community Living Nurse.

The Act defines informed consent as consent given by a patient who understands the information provided by the health care provider about his or her condition and the proposed health care alternatives, if any, and the specific consequences of accepting or declining the recommended treatment.

Temporary Substitute Decision-Maker (TSDM)

Substitute consent may be given by an adult's Representative (under the section of the Adult Guardianship Act called 'Representation Agreements') or a Temporary Substitute Decision-Maker (TSDM).

A TSDM may be -- in this order, if available and eligible under the criteria set out in the legislation -- the adult's spouse, child, parent, brother or sister, or anyone else related to the adult by birth or adoption.

The TSDM will have the authority to consent to the recommended treatment or procedure or make any other required health care decisions on the adult's behalf for a period of 21 days.

TSDM's may not, however, consent to such health care procedures as psychosurgery and organ donation. Only an adult's Representative acting under written instructions, or court-appointed decision-maker given specific authority, may consent to these procedures and others set out in regulations accompanying the Act.

Minor And Major Health Care

The legislation distinguishes between minor health care -- such as simple dental care or routine blood tests -- and major health care, such as surgery.

In minor (routine) health care situation, the health care provider alone may determine that the adult is not capable of giving his or her informed consent to a particular treatment or procedure. The health care provider must then seek consent for the treatment or procedure from the adult's Representative, if she or he has appointed one, or from a TSDM.

Similarly, in a major (serious) health care situation, if the adult has a Representative, that person may make the decision. If the adult has not appointed a Representative, then the health care provider must take some additional steps:

- 2 ? consult another person who knows the adult such as a spouse or close relative before determining if the adult is capable of making an informed decision

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- ? if the adult or the person consulted objects to the decision, or there is no one to consult, then the health care provider must organize a more formal review of the adult's capability as outlined in the legislation.

In either situation, if the adult is determined to be incapable, the health care provider must give the adult notice that she or he has been determined incapable of making an informed decision, and that a family member has been appointed TSDM. (The legislation provides for a new Health Care Review Board which will review and rule on any objections within seven days).

In both minor and major health care situations, if no representative has been appointed or there are no family members willing and able to make these health care decisions, the Act authorizes the Office of the Public Guardian and Trustee to appoint a TSDM.

Emergency Situations

In an emergency situation, where it is not feasible to obtain consent from the adult, the adult's Representative or a TSDM, the Act makes it clear that health care providers may give the necessary emergency treatment with no fear of legal liability.

Office of The Public Guardian And Trustee (OPGT)

The OPGT will assist adults, family and friends in considering alternatives to court-appointed decision makers, and will encourage family and friends to be appointed decision-makers when and if required. The OPGT may be appointed -- generally as a last resort -- as a Substitute Decision-Maker or a Guardian.

Preparing For Implementation Of The Health Care (Consent) & Care Facility (Admissions) Act

CVS wants to ensure that the requirement of health care professionals to obtain consent does not interfere with timely access to health care for our clients. In order to assist health care professionals to comply with the legislation, CVS has developed a form (Temporary Substitute Decision-Makers – SDA 5.12.C) with contact names, address and telephone numbers of the adult's family or support team.

The information is to be used by health care professionals to identify Temporary Substitute Decision Makers for adults who require assistance with decision-making as well as for adults who, due to a crisis, emergency or other temporary circumstance, require additional support or a Temporary Substitute Decision Maker.

In completing this form we want to ensure that the intent of the legislation - the Presumption of Capability - and our staff's primary responsibility - to preserve the rights of the people we serve are maintained. To this end the focus should be on each individual exercising his/her rights and not defer or be supported to defer those rights to others.

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Health Care (Consent) And Care Facility (Admission) Act General Information

On February 28, 2000, significant portions of the four new statutes, which comprise the new provincial adult guardianship and substitute decision-making legislation, come into effect. Together, these Acts promote self-determination and autonomy and form the basis for a comprehensive and integrated system of support and assistance for adults who need help making decisions about their health and personal care, and/or their financial or legal affairs, or who need others to make decisions for them.

The Health Care (Consent) and Care Facility (Admission) Act is particularly relevant to health care professionals and those supporting and assisting adults. The Act sets out the procedure to follow when seeking consent to health care from an adult, or if the adult is not capable of providing consent, from a substitute decision-maker.

The Health Care (Consent) and Care Facility (Admission) Act applies only to adults, that is, those who are 19 years of age or older

- ? it does not apply to psychiatric treatment and care for those who are involuntarily admitted for treatment of a mental disorder under the Mental Health Act
- ? it does not affect human tissue gifts
- ? it does not apply to involuntary treatment for communicable diseases (including tuberculosis and sexually transmitted diseases, and other interventions as prescribed in the Health Act)
- ? it does not apply to emergency medical assistants, notably, ambulance crews

Health Care in the Act is described as:

"... anything that is done for a therapeutic, preventive, palliative, cosmetic or other purpose related to health, and includes (a) a course of health care, for example, a series of immunizations or dialysis treatments or a course of chemo therapy, and (b) participation in a medical research program approved by an ethics committee designated by regulation "

Elements Of Health Care Consent

The Act contains two key elements:

Presumption of Capability

Every adult is presumed to be capable of giving, refusing or revoking consent to health care until the contrary is demonstrated. An adult's way of communicating is not, by itself, grounds for deciding that he or she is incapable of giving, refusing or revoking consent.

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Consent Rights

Every adult who is capable of giving or refusing consent to health care has the right to give or refuse consent on any grounds; to select a particular form of available health care on any grounds; to revoke consent; to expect that their decision will be respected; to be involved to the greatest degree possible in all care planning and decision making.

Who Is Responsible For Obtaining Consent

A health care provider must not provide health care to an adult without the adult's consent, unless in an emergency. Health care providers must make every reasonable effort to obtain the adult's consent before deciding to seek substitute consent. The health care professional who is providing or proposing to provide an adult with health care is responsible for obtaining consent, and may be liable if treatment proceeds without consent.

When seeking consent, a health care provider has a duty to communicate with the patient in a way that is appropriate to the patient's skills and abilities. When communication barriers exist, someone close to the patient can often help. The Act encourages health care providers to involve accompanying family members or friends to help the adult understand, or demonstrate an understanding of the information provided.

When deciding whether a patient is incapable of making a particular consent decision, a health care provider must base the decision on whether or not the patient demonstrates an understanding (a) of the information given to him or her; (b) that the information applies to the patient's own health situation.

If the health care provider thinks that a patient is incapable, the provider should consider whether any communication barriers exist which affect the patient's ability to articulate a decision. Where possible, the provider will consult with family, friends, the patient's regular physician, or anyone else who may be able to assist in the communication process.

The health care provider is required to go through a defined process to determine that the patient is not capable of making his or her own health care decisions. Once determined that the person needs the assistance, a ***Temporary Substitute Decision-Maker or TSDM*** will be formally chosen.

Temporary Substitute Decision Makers (TSDM)

The health care provider must choose, as a substitute decision-maker, the first of the following individuals:

- ? the adult's spouse (includes common law spouse or same sex partner)
- ? the adult's child (if 19 years or older)
- ? the adult's parent
- ? the adult's brother or sister, or
- ? anyone else related to the adult by birth or adoption.

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There are specific regulations that apply, such as the person must have been in contact with the adult during the preceding 12 months, have no dispute with the adult, be capable of giving, refusing or revoking consent, be willing to comply with the duties inherent in making the decisions.

The health care provider must make reasonable efforts to locate substitute decision-makers. If there is no one available or there is a dispute about who is to be chosen, the health care provider must ask the Public Guardian and Trustee to authorize a person to make the health care decision. When this happens, the Public Guardian and Trustee will look into the situation and may either:

- ? choose a friend or relative by marriage, a member of the patient's support network, or some other appropriate person to make the decision, or
- ? as a last resort, authorize one of its staff members to make the health care decision.

Paid staff who provide support and assistance to an adult (i.e.: Ministry for Children and Families Social Worker, Health Services for Community Living Nurse, staff of CVS or other contracted agencies, etc.) will not be appointed as substitute decision makers.

In the case of an adult who requires health care and who has no involved relatives or friends, the Public Guardian and Trustee will authorize one of its staff members to make the health care decision. However, the authorized staff member will consult with the adult's team of paid support staff and professionals as part of the decision-making process.

The Temporary Substitute Decision-Maker's authority to make health care decisions for the patient lasts for 21 days from the date the decision-maker is chosen. If the health care continues beyond the 21 days, the consent will still be effective, as long as the health care began before the 21-day period ends. If the consent is given, but the health care does not begin within the 21-day period, a new consent must be obtained when the treatment is to begin.

The Act restricts the decision-making authority of a TSDM for some forms of health care such as psychosurgery, transplants, experimental health care, aversive therapy, etc.

Making Substitute Decisions

Health care decisions can be complex and present ethical dilemmas for families, friends and others that make decisions on behalf of the adult. Substitute-decision makers must:

- ? consult with the patient as much as possible, with friends and/or relatives
- ? comply with any instructions or wishes the adult expressed while capable
- ? if instructions or wishes are not known, make decisions on the basis of the patient's known beliefs and values, or if these are not known, in the patient's best interest

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A TSDM may refuse consent to health care necessary to preserve life, but only if there is substantial agreement among the health care providers caring for the adult that the decision to refuse consent is medically appropriate and the TSDM complies with the provisions listed above.

The Act provides for the establishment of a Health Care and Care Facility Review Board to provide a mechanism for reviewing a substitute health care decision at the request of the patient, a person acting on the person's behalf or another interested person.