



Informed Consent Procedure

Procedure Number

CHC-PC-0004

Version Nos:

8

1. Purpose

This Procedure outlines the process for clinical staff members to obtain informed consent from patients and/or their personal representatives for each treatment, therapy, procedure or preventative strategy being proposed by the clinical staff members.

2. Application

This Procedure is to be followed by all clinical staff throughout the West Coast DHB (WCDHB).

3. Definitions

For the purposes of this Procedure:

Informed Consent is taken to mean a process involving an individual (and/or their representative if the individual does not have the capacity to consent) becoming appropriately informed and is willing and able to agree to what is being suggested without coercion. It also includes the right to be honestly and openly informed about one's own personal health matters.

Responsible Health Professional is taken to mean the health professional who has the overall clinical responsibility for an individual patient/client.

Consumer is taken to mean an individual who receives health services.

Emergency is taken to mean a situation of extreme urgency involving serious consequences of failure if there is any delay in the provision of a health service..

Service is taken to mean a treatment, therapy, procedure or preventive strategy

Representative is taken to mean (as defined by The Health Act and the Mental Health Compulsory Assessment and Treatment Act) to mean:

- where the individual is under 16, the parent or guardian
- where the individual is dead, the executor or administrator of the estate,
- where the individual is alive, over 16 and is unable to give consent, the person "appearing to be lawfully acting on the individual's behalf".

It can also be someone nominated by the patient, or a family member or even a friend.

Individual is taken to mean a patient/client/consumer.

Child/Young Person is taken to mean an individual aged under 16 years.

4. Responsibilities

For the purposes of this Procedure:

Health Professionals are required to:

- obtain informed consent for each service being proposed to an individual;
- make a judgement as to whether an individual is competent to give informed consent;
- obtain consent from alternative sources where an individual is deemed to be not competent to give consent;
- make every effort (without coercion) to encourage children and young persons (deemed competent to give consent) to involve their parents/caregivers in the consent process.
- provide sufficient information to an individual to enable them to make an informed choice and give informed consent.



Informed Consent Procedure

Procedure Number

CHC-PC-0004

Version Nos:

8

5. Resources Required

This Procedure requires:

- a. WCDHB Consent Forms
- b. Individual's Clinical Record
- c. Information Brochures

6. Process

1.00 General

- 1.01 Informed consent must be obtained for each service being proposed by CHC clinical staff (for the purposes of this Procedure, anaesthesia and surgery are considered to be separated procedures), in accordance with the requirements of Right 7(1) of the Code of Health and Disability Services Consumer Rights (the Code).
- 1.02 The seeking of informed consent is an external expression of the health care professional's ethical duty to uphold and enhance an individual's autonomy, by respecting the individual's person-hood in every aspect of their relationship with that individual.
- 1.03 The principle responsibility for obtaining consent lies with the health professional who is responsible for the service being proposed.
- 1.04 Responsibility for obtaining informed consent can be delegated from the responsible health professional to another health professional. However, the patient/client is to be informed as to the reason why the responsible health professional could not obtain the informed consent.
- 1.05 The length of time that consent is dependent on:
 - the nature of the procedure;
 - progression of condition;
 - likelihood of change in health status between consent and procedure;
 - change in competence.If any of these factors change then re-consent has to be considered. If the wait is longer than 6 months then it is recommended that the patient is reviewed.

2.00 Determination Of Competence To Consent

- 2.01 Right 7(2) of the Code makes the presumption that every individual is competent to make an informed choice and give informed consent, unless the responsible health professional believes that the individual is not competent to do so.
- 2.02 The responsible health professional is required to make a reasonable judgment as to whether an individual is competent to give informed consent to a service, depending on the:
 - i) individual's ability to understanding; and
 - ii) individual's level of maturity; and
 - iii) the seriousness of the service being proposed.



Informed Consent Procedure

Procedure Number

CHC-PC-0004

Version Nos:

8

However, where it is practicable and appropriate, the judgment of the responsible health professional is to be confirmed and documented by the relevant clinical team/MDT

- 2.03 There is no particular age at which individuals are deemed to be able to give consent. Under the Code the actual age of the individual is not the important question, but rather their level of understanding. This fact means that all individuals must be consulted in regard to consent in a manner that is relevant to their age, maturity and understanding.
- 2.04 With children and young persons, the views of a parent/caregiver can be taken into account, but it is the responsibility of the responsible health professional to form an independent judgment with regards to the ability of the child/young person to consent. (NOTE: where it is practicable and appropriate, the judgment of the responsible health professional is to be confirmed and documented by the relevant clinical team/MDT.
- 2.05 Health professionals are not to refuse treatment on the grounds that no parental consent has been given unless they are satisfied that the young person lacks the competence to give informed consent.
- 2.06 Health professionals are to make every effort (without coercion) to encourage children and young persons (who are deemed competent to give consent) to involve their parents/ caregivers in the consent process.
- 2.07 If there is a conflict between the wishes of the young person and their parents/caregiver, health professionals are not to override the wishes of the young person unless there are reasons to doubt their level of competence to make such a decision.
- 2.08 When determining the competence of a young person, health professionals are to make an individual assessment in every case. Questions that can be asked to assist in the determination of competence include:
 - i) Does the young person understand and agree with the diagnosis of their condition ?
 - ii) Does the young person understand the need for treatment and the consequences of not receiving the treatment ? Do they understand that there is a choice available to them ?
 - iii) Does the young person understand the nature of the treatment they are being offered ?
 - iv) Does the young person understand the consequences of treatment, including prognosis and the associated risk (e.g. side effects) ?

3.00 Individuals Deemed Not Competent To Consent

- 3.01 Where an individual is determined as not being competent to consent to a particular treatment/service they still retain the other Rights granted to them by the Code, including:
 - i) the right to be provided with information suitable to their age, maturity and interest;
 - ii) the right to be provided with information in a manner that enables them to understand it;and also retains the right to make an informed choice and give informed consent to the extent appropriate to their level of competence (as per Right 7(3)).
- 3.02 Where the responsible health professional has determined that an individual is not competent to provide informed consent, informed consent can then be obtained:
 - i) for individuals under the age of 16 years from:
 - their parent or guardian (under the Guardianship Act); or



Informed Consent Procedure

Procedure Number

CHC-PC-0004

Version Nos:

8

- person acting in the place of a parent (District Court Judge; Director General of Social Welfare);
 - a personal representative empowered to make such decisions pursuant to a Court order made under the Protection of Personal and Property Rights Act (1988); or
 - ii) for individuals over the age of 16 years from:
 - a personal representative empowered to make such decisions pursuant to a Court order made under the Protection of Personal and Property Rights Act; or
 - an individual with enduring power of attorney.
- 3.03 Where the responsible health professional has determined that an individual is not competent to give consent, and there is no individual entitled to consent on behalf of the individual, (as per Section 3.02) then a service can be provided to the individual, provided (in the opinion of the responsible health professional and the relevant clinical team/MDT):
- i) that it is in the best interests of the individual (*where the service is necessary to save a life or prevent permanent physical and/or mental injury, or prolonged unavoidable pain and suffering*); and
 - ii) that reasonable steps have been taken to ascertain the views of the individual and after considering this, the responsible health professional believes that the provision of the service is consistent with an informed choice that the individual would make if they were competent; or
 - iii) where the views of the individual have not been ascertained, but the views of other persons who are interested in the welfare of the individual have been.
- 3.04 Where the responsible health professional wishes to provide a service to an individual who is not competent to give consent (in accordance with Section 3.03), then this decision is to be documented on the CHC Provision Of Health Service Without Consent Form. The completed Form is to be placed into the individual's medical/clinical record.
- 3.05 The High Court also has the power to order any service that it believes is in the best interests of the individual concerned.
- 3.06 Individuals who hold enduring powers of attorney or who are welfare guardians do not have the legal ability to refuse consent for lifesaving treatment to be provided to an individual, and cannot make decisions regarding medical experimentation/research or ECT.
- 3.06 There may be occasions where an individual is unable to, or refuses to give consent to a service, and health professionals believe that the provision of service is in the best interests of the individual. In these circumstances, it may be advisable to seek a legal opinion (via the Risk and Quality Manager) with a view to seeking authority from the High Court.

4.00 Provision Of Information

- 4.01 Sufficient information is to be provided (by the health professional who is responsible for the service to be provided) to an individual to enable them to make an informed choice and give informed consent. This needs to be an amount of information that a reasonable patient would expect to discuss in order for a reasoned decision to be made.



Informed Consent Procedure

Procedure Number

CHC-PC-0004

Version Nos:

8

- 4.02 Sufficient information is to include:
- i) the name and position of the responsible health professional;
 - ii) the name, effects and possible side effects associated with the service being proposed;
 - iii) risks and benefits of the service being proposed (See Part 10 – Guidelines)
 - iv) the consequences of not receiving the proposed service;
 - v) alternative options that are available;
 - vi) any other information requested by the individual.
- 4.03 It is recognised that in some circumstances:
- i) individuals may not wish to receive all the sufficient information; or
 - ii) it is impossible because of reasonable time constraints to provide individuals with every possible complication.
- However, it is still important that the responsible health professional provide individuals in these circumstances with enough information to enable them to make an informed choice and give informed consent.
- 4.04 The responsible health professional should provide information in writing and/or in a language, style, form and manner that the individual can understand (*see CHC Interpreting For Patients Procedure*).
- 4.05 Sufficient time (given the circumstances) is to be allowed for the individual to consider the information that has been provided to them, and to discuss this with whoever they wish.
- 4.06 When providing information, the responsible health professional should demonstrate the ability to relate and respond effectively to the individual in a manner that will ensure the individual feels safe, not at risk and is not being coerced.
- 4.07 Every patient has the right to receive honest and accurate answers to questions relating to services, including:
- a) the identity and the qualifications of the provider; and
 - b) the recommendation of the provider; and
 - c) how to obtain an opinion from another provider; and
 - d) the results of research.
- 4.08 Any staff member who believes that the individual is not adequately informed about the service they are to receive is to inform the responsible health professional as soon as is practicable.
- 4.09 No consent is to be requested from individuals until the responsible health professional is satisfied (in their professional opinion) that the individual has demonstrated an adequate understanding of the service to be provided.
- 4.10 Medication given for pain relief, in anaesthesia, or to treat psychiatric illness may affect conscious awareness and thus competence to consent. Where practicable, discussion about treatment should take place before the administration is likely to affect competence. When a patient's competence clearly has been impaired by medication and the procedure is not urgent, recovery should be allowed before consent to further treatment is sought.



Informed Consent Procedure

Procedure Number

CHC-PC-0004

Version Nos:

8

5.00 Documenting Consent

- 5.01 In most circumstances (including the use of bed rails and lap belts) it is satisfactory for a written description in the individual's clinical record (in the progress notes section) to include:
- i) that a discussion regarding the proposed service took place; and
 - ii) the information that was provided; and
 - iii) the decision of the individual, or of their representative (to consent or not consent).
- 5.02 Formal written and signed consent is only required by law in the following circumstances:
- i) Mental Health (Compulsory Assessment and Treatment) Act (1992) and Amendments
 - after first month of compulsory treatment; and
 - for electro-convulsive treatment (ECT); and
 - for brain surgery
 - ii) if the individual is to participate in research; and/or
 - iii) the procedure to be performed is experimental; and/or
 - iv) the individual will be under a general anaesthetic; and/or
 - v) where there is a significant risk of adverse effects to the individual. (see Part 10 – Guidelines).
- 5.03 Use of bed rails, lap belts and mitts on patients are to be documented on the CHC Clinical Pathway Form. This is also to include details of the obtaining of consent for the use of these forms of restraint.
- 5.04 Where a CHC Service believes that it would be beneficial to develop a written consent Form for some service, care or treatment that it provides, this is to be developed in conjunction with:
- relevant health professionals;
 - the Risk and Quality Manager.

6.00 Emergency Situations

- 6.01 In an emergency situation, services provided should only be that which are necessary to treat the immediate problem(s). After the emergency the individual must be provided with information regarding the service(s) that were provided to them. (see Section 4.00).
- 6.02 To justify treatment being provided in an emergency situation, 3 questions must be asked:
- i) is the treatment needed to preserve the life, health or well-being of the individual?; and
 - ii) is it impossible to communicate with the individual for the purposes of obtaining consent?; and
 - iii) would a reasonable health professional in this situation go ahead with the treatment in the best interests of the individual concerned.
- If the answer to all 3 questions is yes, then treatment can be provided in the emergency situation.
- 6.03 Where services are provided in an emergency situation, then they are to be documented, in the individual's medical/clinical record, along with the justification for the provision of the treatment, and that the individual was informed regarding the service(s) that were provided to them.



Informed Consent Procedure

Procedure Number

CHC-PC-0004

Version Nos:

8

7.00 Consent For Blood Transfusions

- 7.01 Blood transfusions can be given to individuals under the age of 20 years who have not given informed consent in emergency situations where (in the opinion of the responsible health professional) the transfusion is necessary to save the life of the individual or to prevent permanent injury to his physical or mental health, or to save them from prolonged and avoidable pain and suffering.
- 7.02 In all other non-emergency situations, informed consent is to be obtained before any blood transfusion is given (In accordance with NZBS requirements (NZBS Clinical Compendium ref 108P00401)).

8.00 Refusal Of Consent

- 8.01 Every individual has the right to refuse service and withdraw consent for services.
- 8.02 Where an individual refuses service and/or withdraws consent for services, the best standard of care and support possible in the circumstances is to be provided to the individual.
- 8.03 No undue influence or pressure is to be brought to bear on an individual who has refused services and/or withdrawn consent for services.

(NOTE: SEE WCDHB REFUSAL OF TREATMENT – DISCHARGE AGAINST PROFESSIONAL ADVICE PROCEDURE)

7. Precautions And Considerations

- ➔ Informed consent must be obtained for each service being proposed
- ➔ Sufficient information is to be provided to an individual to enable them to make an informed choice and give informed consent.
- ➔ No consent is to be requested from individuals until the responsible health professional is satisfied (in their professional opinion) that the individual has demonstrated an adequate understanding of the service to be provided.

8. References

- New Zealand Bill Of Rights (1990)
- Code of Health and Disability Service Consumer Rights (1996)
- Consent in Child and Youth Health, Ministry of Health (1998)
- Guardianship Act (1968)
- Health Act (1956)
- Human Rights Act (1993)
- Informed Consent – NZ Health Council Working Party (1989)
- Johnson, Sue; “Health Care and the Law “ (2000)
- Medical Council of New Zealand Statement On Information and Consent
- Minter, Ellison, Rudd, Watts “Health Law – Informed Consent Revisited” (January 2002)



9. Related Documents

WCDHB Consent Forms

WCDHB Refusal Of Treatment – Discharge Against Professional Advice Procedure

WCDHB Provision Of Interpreters Procedure

WCDHB Clinical Documentation Procedure

NZBS Clinical Compendium ref 108P00401

10. Guidelines

1. Risks Associated With Health Services

A common law precedent defining the level of detail required when informing individuals of the risks associated with a health service is found in the Australian High Court decision of *Rogers v Whitaker* (1992) which has been commonly cited within New Zealand Courts since 1996. The definition is:

“enough information is provided so that a reasonable person in the patient’s position, would, if warned of the risk, be likely to attach significance to it; or if the medical practitioner is or should be reasonably aware that the particular patient, if warned of the risk would be likely to attach significance to it.”

2. Consent And Individuals Under 16 Years Of Age

The common law rule on the ability of persons under the age of 16 years is based on the case of *Gillick v West Norfolk and Wisbech AHA* which was considered by the House of Lords in 1985. This case is accepted as binding by New Zealand Courts. The Court decided that whether or not a child can give an effective consent to treatment depends on the child’s individual capacity to make an informed decision. Now known as the *Gillick Test*, the decision of the House of Lords rests on the principle that children are individuals who grow in intelligence, competence and autonomy as they move towards adulthood.

Before providing treatment for someone under the age of 16 years, the health professional must first determine whether the child has the understanding and maturity to form a balanced judgement about the proposed treatment. If so, the child can be treated without parental consent. If not, parental consent must be obtained before treatment is given.

The following questions are useful in determining whether the child has the understanding and maturity to form a balanced judgement about the proposed treatment:

- does the child understand why the treatment/service/intervention ?
- does the child understand what the treatment/service/intervention involves ?
- does the child understand the probable benefits and risks of the treatment/service/intervention ?
- is the child aware of any other alternative treatment/services/interventions ?

The *Gillick Test* also stresses that health professionals should make every effort to encourage children to involve their parents/caregivers in any consent decision. However, if the child refuses to involve their parents/caregiver, the health professional can proceed to treat the child if they are satisfied that:

- the treatment/service/intervention is in the best interests of the child; and
- that the child has the understanding and maturity to consent.



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8

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