RISK NOTE

Obtaining Informed Consent to Treatment

OVERVIEW OF ISSUE

Obtaining informed consent (verbally or written) for treatment/a plan of treatment is an ongoing communication process involving the patient or substitute decision maker (SDM) and the healthcare provider. Informed consent is the result of a comprehensive discussion; the consent form is merely evidence of that discussion. The individual requiring the informed consent to perform a treatment should obtain the patient's signature. It is the responsibility of the healthcare provider to determine the capability of the patient to give consent.

KEY POINTS

- The most important part of the consent process is informing the patient about the risks and benefits of the proposed treatment.

THINGS TO CONSIDER

About Consent

- Provide information about the treatment to the capable patient, at which time they consent to or refuse the treatment. In the event that the patient is not clear about the proposed treatment/procedure, healthcare providers have a duty to advocate on behalf of the patient (i.e. further involve the individual proposing the treatment).
- Persons should not automatically be presumed incapable purely on the basis of age, physical frailty or diagnosis, although all of these factors may be important in the assessment of capacity.
- If the patient is deemed incapable by the healthcare provider, consent must be sought from the patient's highest ranking SDM.
- Consent is not required in an emergency whereby the patient is experiencing severe suffering or is at risk of sustaining serious bodily harm if treatment is not administered. A healthcare provider cannot administer emergency treatment if there was a prior refusal while the patient was capable. Each jurisdiction has unique requirements.
- Consent is rescindable at any time by a patient who is capable of doing so.

Patients

- Are capable of consenting if able to understand information that is relevant to making a decision about treatment and can appreciate the reasonably foreseeable consequences of a decision or lack thereof.
- Have the right to be a reasonably informed participant in decisions involving health care.
- Have the right to refuse or withdraw consent at any time.
- May have fluctuating capacity (i.e. capable at some times and not others), so attempt to confirm consent during lucid moments.

Witnessing

- Requirement to witness may be organization/jurisdiction-specific.
- Witnessing is not a declaration that the witness provided information about risks/benefits.

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The Elements of Informed Consent

For consent to treatment to be valid, the consent must:

- Relate to the treatment being proposed;
- Be informed;
- Be given voluntarily;
- Not be obtained by fraud or misrepresentation.

Consent Content

Information to be Provided in the Consent Process

- The nature of the treatment;
- The expected benefits of the treatment;
- The material risks of the treatment;
- The material side effects of the treatment;
- Alternative courses of action;
- The likely consequences of not having the treatment.

Risk Management and Consent to Treatment

Measures to Avoid Consent to Treatment Liability Exposure

- Fully and adequately advise the patient of the risks of a treatment before they consent.
- Advocate for the patient who has less than a full understanding of the proposed treatment (i.e. the patient must be able to understand the information that is relevant to making a decision about the treatment).
- Have clearly written and practical consent policies, procedures and forms.
- Educate staff addressing the organization's consent process and how to secure a valid consent.
- Accurately document the consent as per the organization's procedures.

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