

<b>Institutional Handbook of Operating Procedures Policy 09.03.18</b>	
Section: Clinical Policies	Responsible Vice President: Senior Vice President and General Counsel
Subject: Patient Rights	Responsible Entity: Legal Affairs

**I. Title**

*Consent – Treatment of a Minor*

**II. Policy**

This policy provides guidance relating to whom may consent on behalf of a minor and when a minor may consent on their own behalf to receive medical treatment from UTMB providers. In accordance with Texas law and UTMB policy, informed consent for medical treatment of a minor will be obtained before treatment begins.

Generally, minors do not have the legal capacity to consent for medical treatment. Texas law gives parents the duty to provide medical care for their children, and therefore, gives them the explicit right to consent to such treatment. As a general rule, UTMB must obtain consent from a minor’s parent prior to providing medical treatment. This duty includes the right to access the minor’s medical records in accordance with federal and state law and UTMB policy.

This policy does not apply to minors who have been legally emancipated.

UTMB respects the diverse cultural needs, preferences, and expectations of the patients and families it serves to the extent reasonably possible while appropriately managing available resources and without compromising the quality of health care delivered.

**III. Authority of Parents and/or Conservators to Consent on Minor’s Behalf**

- A. Consent for treatment of a minor may be given by a minor’s parent (or conservator, when applicable).
- B. Divorced Parents
  - 1. *Managing Conservator(s)*: In a custody suit, the court may appoint a sole managing conservator or may appoint joint managing conservators.
  - 2. *Possessory Conservator(s)*: If a managing conservator is appointed, the court may appoint one or more possessory conservators. The court will specify the rights and duties of a person appointed as a possessory conservator.
  - 3. Texas law provides that, unless limited by a court order, a parent appointed as conservator (managing or possessory) of a minor has, at all times, the following rights:
    - a. The right of access to medical, dental, psychological, and educational records of a minor;
    - b. The right to consult with a physician, dentist, or psychologist of the minor;
    - c. The right to be designated on the minor’s records as a person to be notified in case of emergency; and
    - d. The right to give consent for any *emergency* health care, including surgical procedures.
  - 4. Sole or joint managing conservator parent(s) have all the rights listed above *and* may give consent for a minor’s non-emergency invasive surgical procedure and may consent to psychological or psychiatric treatment of a minor, unless limited by a court order.
  - 5. Non-Parent Conservators

- a. *Non-Parent Sole Managing Conservator*: Non-parent sole managing conservators have the right to provide consent for the minor to receive medical, psychiatric, psychological, dental, and surgical treatment and to have access to the minor's medical record.
- b. *Non-Parent Joint Managing Conservator*: Non-parent joint managing conservators have the same rights as a parent joint managing conservator including access to the medical records of the minor, unless this right is limited by a court order.

#### **IV. Authority of Non-Parents to Consent on Behalf of a Minor**

- A. The following individuals may consent to health care treatment of a minor (other than immunization) when a parent or conservator cannot be contacted and that person has not given express notice to the contrary:
  1. A grandparent of the minor;
  2. An adult brother or sister of the minor;
  3. An adult aunt or uncle of the minor;
  4. An educational institution in which the minor is enrolled that has received written authorization to consent from a person having the right to consent;
  5. An adult who has actual care, control, and possession of the minor and has written authorization to consent from a person having the right to consent;
  6. A court having jurisdiction over a suit affecting the parent-child relationship of which the minor is the subject;
  7. An adult responsible for the actual care, control, and possession of a minor under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or
  8. A peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.
- B. Obtaining Consent from a Non-Parent
  1. If a non-parent consents to the treatment of a minor, the consent must be in writing and include:
    - a. The name of the minor;
    - b. The name of one or both parents, if known, and the name of any managing conservator of the minor;
    - c. The name of the person giving consent and their relationship to the minor;
    - d. A statement of the nature of the treatment to be given, and
    - e. The date the treatment is to begin.

#### **V. Consent by Minor**

- A. **Medical, Dental, Psychological, and Surgical Treatment:**

A minor may provide consent for medical, dental, psychological and surgical treatment of the minor if the minor:

  1. Is on active duty with the armed services of the United States of America;
  2. Is 16 years of age or older and resides separate and apart from his or her parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence; and, is managing his or her own financial affairs, regardless of the source of the income;
  3. Consents to the diagnosis and treatment of any infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health Services;
  4. Is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;

5. Consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use;
6. Is unmarried, is the parent of a child, and has actual custody of his or her child and consents to the medical, dental, psychological, or surgical treatment of that child;
7. Is serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice, unless the treatment would constitute a prohibited practice under Texas Occupations Code Section 164.053 (a)(19) (relating to an abortion on an unemancipated minor).

**B. Counseling**

A minor may also consent to counseling for suicide prevention, chemical addiction or dependency, or sexual, physical, or emotional abuse. Unless prohibited by a court order and upon obtaining consent, a licensed or certified physician, psychologist, counselor, or social worker with reasonable grounds to believe the minor has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may counsel the minor without the consent of the minor's parents, managing conservator, or guardian.

**C. Suspected Abuse or Neglect**

If a provider has a reasonable belief that a minor's physical or mental condition has been adversely affected by abuse or neglect, he or she may examine the minor *without* consent from the minor, the minor's parents, or other person authorized to provide consent. The examination may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests.

**EXCEPTION:** A minor *may not* be examined if prohibited by a court order or if the minor is 16 years of age or older and refuses to consent. Additional guidance regarding suspected abuse or neglect of a minor, including the duty to report, is available in IHOP - 09.03.09 - Reporting Suspected Abuse and Neglect of Children, the Elderly and/or Disabled Persons.

**VI. Family Planning**

- A. Under federal law, a minor may consent to family planning services if those services are reimbursed by Title X, XIX or XX funds. Family planning services provided under these provisions are confidential.
- B. Parental consent is required for a minor to receive family planning services if such family planning services are funded by Title V (Maternal and Child Health) or Title XX (Social Services/TANF and not Title X).

**VII. Confidentiality and Access to Medical Records when a Minor Consents to Treatment**

- A. Sensitive communication and assurance of confidentiality are critical to ensuring access to care for minors, especially adolescent minors. If a provider agrees to treat a minor confidentially based on the minor's consent in accordance with this policy, the provider should not initiate communication with the minor's parent or guardian to discuss issues related to the treatment.
- B. However, state law provides that parents and guardians are not prevented from accessing the medical information of a minor who has consented to treatment. If a parent, guardian, or other person claiming to be the personal representative of a minor requests access to a minor's medical or billing records, or to speak with a healthcare provider relating to treatment provided with the minor's consent in accordance with this policy, contact the Department of Legal Affairs.

- C. For more information related to the use and disclosure of a minor's protected health information (PHI), see IHOP Policy 6.2.3 Use and Disclosure of PHI by Personal Representatives of Minors, Incapacitated and Deceased Individuals.

## VIII. Provider Compensation

- A. A parent, managing conservator, or guardian who has not consented to medical treatment or counseling on behalf of a minor is not obligated to compensate a physician, psychologist, counselor, or social worker for such counseling services.

## IX. Definitions

**Adult:** Generally, a person 18 years of age or older, or a person under 18 years of age who has had the disabilities of minority removed (i.e., has been legally emancipated by a court).

**Attending Physician:** The physician with primary responsibility for a patient's treatment and care.

**Decision-making capacity:** The ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.

**Express consent:** Oral or written consent given by a competent person or authorized representative for an incapacitated patient.

**Implied consent:** Consent that may be inferred from the patient's actions or behavior (e.g., extending their arm for a blood draw). Implied consent is rarely documented and may be relied upon only for care, treatment or service that is routine and does not involve significant risk(s). Implied consent may not be used for HIV testing except as provided in [IHOP Policy 9.3.10 Consent for HIV Antibody Testing and for Disclosure of Results](#)

**Incapacitated:** Lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits, risks, complications and reasonable alternatives to any proposed treatment.

**Informed consent:** Adult patients (or, when appropriate, their surrogate decision-makers) must receive from their physician information regarding the risks and benefits of a proposed treatment and/or procedure. Obtaining informed consent also allows the patient to fully participate in their care. Except in emergencies, this information may include, but is not limited to:

1. the patient's diagnosis, if known;
2. the general nature and purpose of the procedure or treatment, including its risks and benefits and whether it is experimental;
3. the name(s) of the person(s) performing the procedure or administering the treatment; the benefits, risks, discomforts, side effects, complications, and potential problems related to recuperation associated with the procedure or treatment;
4. the likelihood of success;
5. the patient's prognosis and risks and benefits of not receiving or undergoing a treatment or procedure; and
6. reasonable alternatives (regardless of their cost or the extent to which treatment options are covered by health insurance).

**Legal Guardian:** an individual or public agency appointed for a temporary, fixed, or indefinite term by order of the court located in the county in which the patient resides.

**Managing Conservator:** A parent, competent adult, authorized or licensed child placing agency appointed by a court to provide the place where the minor will live and receive daily care.

**Minor (or child):** a person under the age of 18 who has not been legally emancipated by a court.

**Parent:** includes the child’s biological mother and father (including a man adjudicated to be the biological father), or adoptive mother or father, but not a parent with whom the parent-child relationship has been legally terminated.

**Possessory Conservator:** one or more court-appointed person(s) with approved possession of the child during specified times and conditions.

**Surrogate decision-maker:** A person with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

**X. Relevant Federal and State Statutes**

- [Texas Family Code Chapter 32](#)
- [Texas Family Code Chapter 151](#)
- [Texas Health and Safety Code Chapter 773](#)
- [Texas Occupations Code Chapter 159](#)

**XI. Related UTMB Policies and Procedures**

- [IHOP - 06.02.03 - Use and Disclosure of PHI by Personal Representatives of Minors, Incapacitated, and Deceased Individuals](#)
- [IHOP - 06.02.16 - Permitted Uses and Disclosure of PHI in Special Situations](#)
- [IHOP - 09.03.10 - Consent for HIV Antibody Testing and Disclosure of Results](#)
- [IHOP - 09.03.16 - Consent - Refusal of Consent/Treatment](#)
- [IHOP - 09.03.17 - Consent - General Overview and Basic Requirements](#)
- [IHOP - 09.03.20 - Universal Childhood and Adolescent Immunizations](#)
- [IHOP - 09.03.21 - Consent - Sterilization](#)
- [IHOP - 09.01.21 - Examination and Treatment for Emergency Medical Conditions and Women in Labor](#)
- [IHOP - 09.03.20 - Informed Consent for Immunization of a Minor](#)

**XII. Additional References**

Letter from Texas Department of Health to: Texas Health Steps Provider, dated September 21, 1998.

**XIII. Dates Approved or Amended**

<i>Originated: 04/01/1994</i>	
<i>Reviewed with Changes</i>	<i>Reviewed without Changes</i>
03/28/2014	04/14/2017
	06/11/2020

**XIV. Contact Information**

Legal Affairs  
(409) 747-8738