



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 4.5.31	Subject: INFORMED CONSENT AND RIGHT TO REFUSE CARE
Chapter 4: FACILITY/PROGRAM SERVICES	Page 1 of 3 and Attachment
Section 5: Clinical Services	Effective Date: July 1, 1998
Department Director Signature: /s/ Brian Gootkin	Revised: 4/19/2021
Medical Director Signature: /s/ Dr. Paul Rees	
Clinical Services Division Administrator Signature: /s/ Connie Winner	

I. POLICY

The Department of Corrections will ensure that offenders have the right to make informed decisions regarding healthcare, including the right to refuse care

II. APPLICABILITY

All secure care facilities, Department owned and contracted, as specified in contract

III. DEFINITIONS

Chief Facility Health Officer – The health authority or nursing supervisor responsible for the facility health care services.

Facility – Refers to any prison or secure care correctional facility under Department jurisdiction or contract.

Facility Administrator – The official, regardless of local title (administrator, warden, superintendent), ultimately responsible for the facility or program operation and management.

Health Care Providers – Licensed health care providers (e.g., physicians, nurses, psychiatrists, dentists, and mental health care practitioners), including contracted or fee-for-service providers, responsible for offender health care and treatment

Health Care Staff – Includes licensed health care providers and non-licensed health care staff (e.g., medical records staff, health care aides) responsible for offender health care administration and treatment

Informed Consent – An offender’s written voluntary consent for treatment or procedure after he or she receives the material facts about the nature, consequences, and risks of the proposed treatment or procedure and has been informed of the available alternatives.

IV. DEPARTMENT DIRECTIVES

A. General Requirements

1. All examinations, treatments, and procedures are governed by informed consent practices applicable in the jurisdiction.

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2. For procedures and medications that in the community setting would require informed consent, written documentation of informed consent is required.
3. Any health evaluation and treatment refusal are documented in the offender's record and must include the following:
 - a. Description of the service being refused;
 - b. Evidence that the offender has been informed of any adverse health consequences that may occur because of the refusal;
 - c. Signature of the offender; and
 - d. Signature of a health staff witness.
4. If the offender does not sign the refusal form, it is to be noted on the form by a second health or custody staff witness

B. Mental Health

1. Risks and benefits of an intervention, as well as benefits to refusing an intervention, are explained to the offender
2. For procedures, testing, or any treatment where there is risk and benefit to the offender, such as the prescription of psychotropic medication, informed consent is documented on a written form containing the signatures of the offender and a mental health services staff witness
3. Any health intervention refusal is documented and must include the following:
 - a. Description of the nature of the service being refused;
 - b. Evidence that the inmate has been made aware of any consequences to health/mental health that may occur as a result of the refusal;
 - c. Signature of the offender; and
 - d. Signature of the mental health staff witness.
4. If the patient does not sign the refusal form, it is to be noted on the form by a mental health services staff witness.

C. Juvenile Offenders

1. Policy and procedures specify circumstances under which risks, and benefits of an intervention explained to the offender.
2. The informed consent of next of kin, guardian, or legal custodian applies when required by law.
3. For invasive procedures or any treatment where there is risk and benefit to the offender, informed consent is documented on a written form containing the signatures of the offender, legal guardian if required, and health staff witness.
4. Any health evaluation and treatment refusal is documented and must include the following:
 - a. description of the nature of the service being refused;

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- b. evidence that the juvenile has been made aware of any adverse health consequences to health that may occur because of the refusal;
 - c. signature of the offender; and
 - d. signature of the health witness.
5. There is evidence of involvement of the legal guardian in cases of refusal when required by the laws of the jurisdiction.
6. In the event the offender does not sign the refusal form, it is to be noted on the form by a health staff witness.

V. CLOSING

Questions concerning this policy should be directed to the Clinical Services Administrator.

VI. REFERENCES

- A. 53-1-203, MCA (2009) Powers and Duties of the Department of Corrections*
- B. P-G-05; National Commission on Correctional Health Services in Prisons, 2018*
- C. ACA Standards for Juvenile Correctional Facilities, 2003*
- D. DOC Policy 4.5.32, Right to Refuse Medical Treatment*
- E. MH-1-04; National Commission on Correctional Mental Health Services in a Correctional Facility, 2015*
- F. Y-1-04; National Commission on Correctional Health Services in Juvenile Detention or Confinement Facilities, 2015*

VII. ATTACHMENT**Related Form:**

[Informed Clinical Consent](#)