



POLICY DIRECTIVE

Policy:	DOC 4.5.31 INFORMED CONSENT AND RIGHT TO REFUSE CARE
Effective Date:	07/01/1998 Page 1 of 2
Revision Date(s):	04/19/2021; 04/24/2026
Department Director Signature:	/s/ Eric Strauss, Director
Medical Director Signature:	/s/ Dr. Paul Rees, MD
Health Services Bureau Chief Signature:	/s/ Cynthia McGillis-Hiner, RN, MSN

I. POLICY

The Department will ensure that offenders have the right to make informed decisions regarding health care, including the right to refuse care.

II. APPLICABILITY

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

III. DEFINITIONS (see Glossary)

IV. REQUIREMENTS

A. General Requirements

1. All examinations, treatments, and procedures are governed by informed consent practices applicable in the jurisdiction.
2. For processes 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 health 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 either on the form or in the patient's health record by a 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 processes, 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 or 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 offender does not sign the refusal form, it is to be noted either on the form or in the offender's health record by a health or custody staff witness.

C. Juvenile Offenders

1. Policy and procedures specify circumstances under which risks and benefits of an intervention are 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 a health staff witness.
4. Any health evaluation and treatment refusal are documented and must include the following:
 - a. description of the nature of the service being refused;
 - 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 about this policy should be directed to the Health Services Bureau Chief.

VI. REFERENCES

- A. 53-1-203, MCA
- B. DOC 4.5.32 *Right to Refuse Medical Treatment*
- C. P-G-05; *National Commission on Correctional Health Services in Prisons, 2018*
- D. *ACA Standards for Juvenile Correctional Facilities, 2003*
- 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, 2022*

VII. FORM

Informed Clinical Consent