

## Changes to Informed Consent Law in North Carolina

The law on Informed Consent in North Carolina changed effective October 1, 2007. The General Assembly approved changes to N.C.G.S. 90-21.13, in order to set additional standards for obtaining informed consent from patients prior to a medical procedure in North Carolina.

Under the new law, if a patient lacks capacity to make a decision regarding their choice to undergo a medical procedure, or is unable to communicate their decision, then the law allows another person to make that decision. The new law designates the following persons, in the order indicated, as having authority to consent to medical treatment on behalf of a patient:

1. A court appointed guardian;
2. A health care agent designated in a health care power of attorney;
3. An attorney-in-fact, with specified powers to make health care decisions, designated by a general power of attorney;
4. A patient's spouse;
5. A majority of the patient's reasonably available parents and children who are at least 18 years of age;
6. A majority of the patient's reasonably available siblings who are at least 18 years of age;
7. An individual who has an established relationship with the patient, who can reliably convey the patient's wishes;

If none of the persons listed above are reasonably available, then patient's attending physician, so long as there is confirmation by a second physician of the patient's condition and the necessity for treatment, may provide the treatment without consent.

The law does not define the term "reasonably available". However, it is recommended that attempts be made to ascertain if the aforementioned individuals exist in the order listed, and if so whether they can be contacted either in person or by phone. By way of example, an incompetent patient may not have a guardian, health care agent, attorney-in-fact, or spouse, however the medical record may reveal that they have living parents or children who are at least 18 years of age. In that situation, reasonable attempts to contact those individuals should be undertaken.

Documentation in the medical record is critical regarding this process. Specifically, documentation should include any attempts that are made to contact individuals in the order listed. An example of documentation could be: "Patient does not have guardian, HCPOA or POA. Not married. Determined that patient has one living parent and two adult children. Phone calls made to all three regarding consent for Ms. Smith. Parent and oldest child gave informed consent over the phone after discussing risks and benefits

with Dr. Jones. Phone consent witnessed by two licensed personnel. Proceeding with surgery.”

If none of the persons listed above can reasonably be contacted, then the attending physician, if there is concurrence with a second physician of the patient’s condition and necessity for treatment, may provide healthcare treatment without consent. In the event this option is used, it is recommended that the attending physician and the concurring physician document their agreement of the patient’s medical condition, the necessity of the medical procedure, and their agreement to proceed without consent in the medical record.

The new law affords greater guidance and flexibility for health care providers in attempting to provide appropriate care to patients in North Carolina.

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