

Education Express

Indiana Consent Law Change



Level of education: Level II Moderate **YELLOW**

June/2018

Informed consent is a vital process for patients or their decision makers to help ensure understanding of procedures and other interventions that may be needed as part of their health care. Effective July 2018, there is a defined order of decision makers if the patient is unable to provide informed consent.

If an **ADULT** is incapable of consenting, then informed consent may be given by individuals in the **following order**:

1. **Health care representative or power of attorney (requires documentation)**
2. **A court appointed guardian or court appointed health care representative (requires documentation)**
3. **A spouse**
4. **An adult child**
5. **A parent**
6. **An adult sibling**
7. **A grandparent**
8. **An adult grandchild**
9. **The nearest other adult relative in the next degree of kinship who is not listed in subdivisions (1 through 8)**
10. **A friend who:**
 - **Is an adult**
 - **Has maintained regular contact with the individual; and**
 - **Is familiar with the individual's activities, health, and religious or moral beliefs**
11. **The individual's religious superior, if the individual is a member of a religious order.**

Additional new Requirements:

- For adults **and minors**, a member of the care team is required to make reasonable inquiry of individuals available to consent through review of medical records or personal effects and attempt to contact individuals who are high in the priority level
- If there are multiple individuals at the same level of priority, e.g. 3 adult children, those individuals shall make a reasonable effort to reach a consensus as to the healthcare decision. If they disagree, the decision by the majority in that priority level controls
- Those **not able to render** health care consent include:
 - A spouse who is legally separated or has a petition for dissolution, legal separation or annulment of marriage pending in court
 - An individual who is subject to a protective order or other court order that directs that individual to avoid contact with the incapable adult
 - An individual who is subject to a pending criminal charge in which the adult is the alleged victim

A witness signature (signature by witness is confirming signature of patient or decision maker, not the content of the informed consent discussion with the treating practitioner) should also be included on the consent form.

Consent policies will be updated during the month of July within our hospitals to reflect this change. As always, any questions surrounding the informed consent process can be directed to social services, chaplaincy, clinical risk, an ethics representative, administrator on-call, or the IU Health attorney on-call.

Highlights

New Indiana consent law:

- New decision makers for the list of those who can consent for the patient
- A priority listing of decision makers
- Obligation to make reasonable attempts to contact decision makers
- Defines who may not consent for patients

IU Health consent processes changes:

- Documentation of reasonable attempts to reach decision makers
- Witness signing of signature by patient or decision maker