



PATIENT CONSENT AND REFUSAL FOR EMS SERVICES

Effective: January 1, 2022
Replaces: April 27, 2017

I. Purpose

The purpose of this policy is to define the circumstances in which an individual is considered a patient and the information that should be provided prior to a patient deciding to receive or refuse care/transport. Adults and certain minors determined to have capacity are entitled to make decisions about their health care. Whenever possible, prehospital care providers should inform patients of the benefits, risks, and alternatives to recommended medical care before patients decide to refuse or consent to such care.

Secondly, this policy explains procedures for prehospital care providers to follow when a patient refuses treatment and/or transport recommended by the prehospital care provider.

Finally, this policy explains the procedures for prehospital care providers to follow when both the provider and the patient agree that treatment and/or transport are not needed.

II. Definitions

For purposes of this policy, the following definitions shall apply.

- A. **Adult:** An individual who is 18 years of age or older.
- B. **Capacity:** The ability to understand the nature and consequences of a decision and to make and communicate a decision, including in the case of proposed health care, the ability to understand its significant benefits, risks, and alternatives.
- C. **Minor legally authorized to consent to medical treatment:** An individual under 18 years of age who meets any of the following criteria:
 - 1. Was or is legally married.
 - 2. Is on active duty in the military.
 - 3. Has a court-declared emancipation.
 - 4. Is pregnant and seeks or needs medical care related to prevention or treatment of pregnancy.

- D. **Legal Representative:** A patient's authorized guardian or conservator appointed pursuant to a power of attorney for health care, or other legally authorized person. In the case of a patient who is a minor, the legal representative may be:
1. Either parent, if the minor's parents are married or the minor was born out of wedlock.
 2. Any parent with the right and responsibility to make health care decisions for the minor, if the minor's parents are divorced.
 3. An adoptive parent.
 4. A stepparent, or registered domestic partner of a parent of the minor, who has written authorization from the minor's natural parent or guardian or a valid Caregiver's Authorization Affidavit.
 5. A guardian of the minor.
 6. A nonparent adult relative with whom a minor is living and who has completed and signed a Caregiver's Authorization Affidavit. The relative can be a spouse, parent, stepparent, sibling, stepsibling, half-sibling, uncle, aunt, niece, nephew, first cousin, any person with the prefix "grand" or "great," or the spouse of any such persons, even after the marriage has terminated by death or dissolution.
 7. Any other person with written authorization from a parent or guardian to consent to treatment of the minor.

In the event that two or more legal representatives of a minor disagree about assessment, treatment or transportation of the minor, the prehospital care provider may decide to provide assessment, treatment or transportation if delay might jeopardize the minor's health. Such decision should be documented in the patient care record. If delay would not jeopardize the minor's health, then assessment, treatment and/or transportation should be withheld until the conflict is resolved.

The prehospital care provider may also reasonably rely on the representations and decisions of an individual purporting to be a minor's legal representative if (1) the prehospital care provider cannot easily confirm the individual's authority to make health care decisions for the minor and (2) delay in obtaining such confirmation might jeopardize the minor's health.

- E. **Implied Consent:** Consent that is implied by the actions or conduct of the patient, rather than direct communication through words, or by the circumstances at hand. Implied consent applies in a medical emergency if a patient lacks capacity and has no legal representative present to consent to, or refuse, any recommended treatment or transport.

- F. **Patient:** An individual for whom emergency medical assessment, care, or emergency ambulance transportation has been requested and who meets at least one of the following criteria:
1. Has a chief complaint or is deceased.
 2. Is accompanied by a witness, or someone with personal knowledge of the individual, who (1) states that the individual has a chief complaint or (2) makes a request for examination or treatment on the individual's behalf.
 3. Has an obvious symptom or signs of injury or illness.
 4. Has been involved in an event with a mechanism that the average EMS Responder would believe could cause injury.
 5. Appears to be disoriented, have impaired psychiatric function, or suicidal intent.

III. Individuals Legally Authorized to Refuse Care

An individual is legally authorized to refuse care if he or she:

- A. Is any of the following:
1. An adult who has capacity;
 2. A minor legally authorized to consent to medical treatment and who has capacity; or
 3. A legal representative of a patient and has capacity; and
- B. Is not currently suicidal; and
- C. Is not on a psychiatric hold under California Welfare and Institutions Code Section 5150 (or similar hold).

An individual is not legally authorized to refuse care if he or she does not meet the criteria above.

IV. Procedure

A. Identification of Patients

Upon arrival at the scene, EMTs, paramedics, or first response air ambulance crew members shall determine if any patients exist.

B. Capacity Assessment

In the event of a medical emergency, a patient's consent to any necessary medical assessment, treatment, and transportation may be presumed without

(1) assessing whether an individual is legally authorized to refuse care or (2) obtaining consent for any necessary medical assessment, treatment, and/or transportation. If the situation allows, however, EMTs, paramedics, or first response air ambulance crew members shall introduce themselves to any patients who may require medical care, assess their capacity, and if applicable, determine whether an individual legally authorized to refuse care for the patient is present.

C. Consent to, or Refusal of, Medical Assessment

1. If no individual legally authorized to refuse care for the patient is present, the patient shall be assessed, treated, and transported as necessary, based upon implied consent, unless other provisions of this Prehospital Care Policy apply. EMS personnel shall document the capacity determination in the Patient Care Record.
2. If an individual is legally authorized to refuse care, he or she shall be asked, whenever possible, for consent to medical assessment and any necessary treatment and/or transportation.
 - a. If the individual consents to a medical assessment, then EMS personnel shall follow applicable policies related to the provision of patient care and documentation.
 - b. If the individual refuses a medical assessment, then EMS personnel shall follow applicable policies related to prehospital care documentation, and complete a Santa Clara County EMS Refusal of Service form, if applicable.

D. Consent to, or Refusal of, Treatment and Transport

1. Following the medical assessment, EMS personnel shall—whenever possible—inform the individual legally authorized to refuse care of any proposed care before administration of such care and prior to any transport.
2. The prehospital care provider shall give the individual legally authorized to refuse care sufficient information to provide a basis for the individual to make a decision regarding whether to agree to treatment and transport from the prehospital care provider.
3. Prehospital care providers must use the Patient Care Record and, if applicable, the Santa Clara County EMS Refusal of Service form (electronic or hardcopy), to document that the individual legally authorized to refuse care acknowledges understanding the information provided before deciding to refuse service.
 - a. If the individual legally authorized to refuse care continues to decline recommended treatment or transport, he or she shall sign the Santa Clara County EMS Refusal of Service form.

- b. In the event that an individual who is legally authorized to refuse care refuses to sign the Santa Clara County EMS Refusal of Service form, the prehospital care provider shall document said refusal and have at least one objective witness sign the Santa Clara County EMS Refusal of Service form, in addition to the prehospital care provider.
4. An individual may be released from the scene without a signed Santa Clara County EMS Refusal of Service form if the individual is not a patient, does not require immediate medical care, or the individual legally authorized to refuse care refuses EMS services. Documentation in the Patient Care Record describing the event shall include the same components as listed above.
5. If an individual legally authorized to refuse care refuses treatment and/or transport, all additional responding medical personnel shall be cancelled.
6. In situations where (1) the documentation information required in Section F (below) cannot be obtained or (2) an individual refusing treatment or transport does not have capacity to make such a decision, the paramedic shall contact the Base Hospital for direction.

E. Alternatives to Transport by Ambulance

If the patient does not present a need for ambulance transport to an emergency department, the patient shall be afforded with opportunities to select alternative transportation coordinated and paid for by the patient.

F. Documentation

1. The patient care record shall serve as the mechanism for documenting the requirements of this policy.
2. **Capacity Determination**

The prehospital care provider must document in the Patient Care Record:
 - a. any determination that a patient lacks capacity, has recovered capacity, and/or has a legal representative present.
 - b. any verification of a legal representative's authority to make health care decisions for the patient.

3. Refusal of Service

The prehospital care provider must ascertain and document all of the following information in the Patient Care Record for any direct patient contact that results in completion of the Santa Clara County EMS Refusal of Service form:

- a. The patient is 18 years of age or older or is a minor legally authorized to consent to medical treatment.
- b. The patient is alert and oriented to time, place, person and event.
- c. The patient does not have an altered mental status.
- d. There are no barriers to communicating with the patient or legal representative (e.g., the individual speaks English, or a translator is present to explain the prehospital care provider's information to the individual).
- e. The risks and complications of refusal of service have been explained to the patient or legal representative.
- f. The patient or legal representative understands the nature of the medical condition and the risks and the consequences of refusing care.
- g. The patient or legal representative has been advised that he or she may call 9-1-1 again if they wish to receive any necessary emergency treatment and/or transport.