



Fact Sheet: Using Professional Interpreters for Valid Consent

Our obligations

- It is a legal requirement to inform patients of their proposed operation, procedure, treatment or research and to obtain their consent.
- Information must include material risks, benefits and alternatives.
- Failure to do this could result in legal action for assault and battery against a practitioner who performs the operation, procedure or treatment. Failure to disclose material risks to a patient may give rise to civil action for negligence.

Valid consent

The following four criteria must be met for a valid written or verbal consent:

1. the patient must have capacity
 2. consent must be freely given
 3. consent must be specific to the procedure or treatment proposed
 4. consent must be informed.
- It is the legal responsibility of the health practitioner carrying out the treatment to ensure that a valid consent has been obtained.

Exceptions

- The only exceptions to obtaining informed consent from the patient are in an emergency, when the patient is younger than 16 or when the law says the patient must have treatment.

More information

This fact sheet should be read in conjunction with NSW Health Directives:

- [NSW Health Consent to Medical and Healthcare Treatment Manual \(Consent Manual\)](#)
- [PD2017_044 Standard Procedures for Working with Health Care Interpreters.](#)

When a patient is not fluent in English or Deaf

- If a patient has indicated they require an interpreter, or if you cannot communicate in English with the patient, you must use a health care interpreter to ensure patient consent is valid and that the patient has understood the information provided.
- **Consent for treatment may not be valid if it is obtained through a child or family members, other patients, visitors or staff acting as interpreters.**
- A bilingual health professional who is confidently proficient in the patients' language may obtain the patients' consent in the patients' preferred language. They must document this on the consent form and in the patients' medical record. This does not mean they can interpret for others.

Written consent

- NSW Health requires written consent for major procedures requiring anaesthesia or IV sedation, invasive procedures where there are significant risks or complications or blood transfusion or experimental treatment.
- Written consent is only valid if the four criteria have been met.
- If using an interpreter, after the health practitioner is satisfied the patient understands the necessary information, the health practitioner should read out the consent form and interpreter interpret this. The interpreter then signs and dates the consent form in the relevant area.
- If a telephone interpreter is used this should be recorded on the consent form along with the date and interpreter's name.