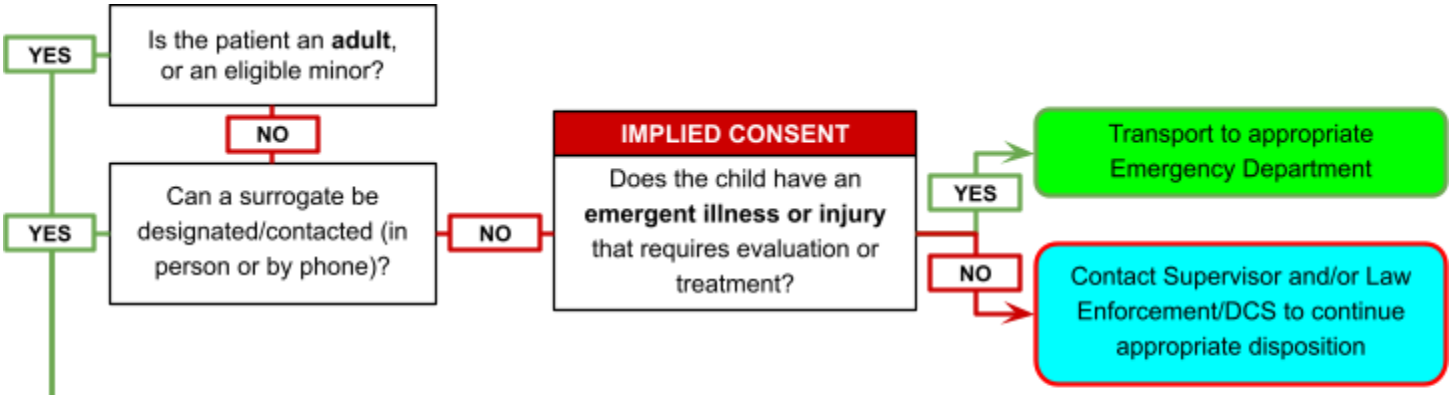
P-02 DETERMINATION OF CAPACITY		First Responder EMT AEMT Paramedic

Can the patient/surrogate make decisions regarding medical care?

See next pages for more detailed explanations of each step in this chart.



CAPACITY	INFORMED CONSENT	MENTAL HEALTH EXCEPTIONS
Does the patient/guardian have the mental capacity to make an informed decision over care?	Does the patient/guardian understand the risks of refusing evaluation/treatment/transport?	Does the patient meet criteria for a Mental Health Hold? *(see Psychiatric Holds, below)*
• Are they able/willing to communicate with the EMS provider? • Are they generally oriented to person, place and time? • Can they provide a reasonable understanding of the events surrounding EMS response—also see informed consent (*see right)*? • **Intoxication**: Is the patient acutely intoxicated or under the influence of drugs?	• Do they understand the nature of the illness or injury? • Can they verbalize an understanding of the consequences of refusing care or transport?	• Has the patient displayed suicidal or homicidal thoughts/actions? • Have they showed evidence of being a danger to themselves or others? • Do they show signs of acute (new/significantly worsened) psychosis (hallucinations or delusions) that prevent them from being able to take care of their basic needs or put them or others at an unreasonable risk of harm.

STOP

If the patient does not meet **ANY ONE OF** the criteria above, they cannot refuse evaluation and treatment and must be transported.

- If the patient meets **ALL THREE** criteria above, they should be considered to have the capacity to make decisions for themselves or act as a surrogate.
- If there is any question, contact your supervisor or online medical control.

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Psychiatric Holds - "Title 33" or "6401"

Law Enforcement Officer/Other Healthcare Provider recommends a hold/transport:

- If a law enforcement office, physician, mental health worker, etc. have evaluated a patient and determined that there is **reasonable doubt** that the patient is a threat to themselves or others (suicidal, homicidal, psychotic, etc.) they may place the patient under a temporary psychiatric hold.
- **A paper copy of the hold form is NOT required for EMS to transport a patient.**
- If one of the above providers have recommended the patient be evaluated (i.e. put under a hold), you should always honor that recommendation and transport the patient for evaluation. The only exception is if there is no doubt (at all) of the patient being competent, AND **the case has been discussed with medical control and the physician agrees with the release of the patient.**

For EMS Personnel:

Section § 33-6-402, Detention Without Warrant Authorized, states "If a [law enforcement] officer, a physician, a psychologist, or a [mental health worker] has reason to believe that a person is subject to detention under § 33-6-401, then [that professional] may take the person into custody ***without*** *a civil order or warrant for* ***immediate examination*** *under § 33-6-404 for certification of need for care and treatment."*

- EMS personnel also can evaluate for, enact, and enforce a temporary hold working under the supervision of a physician (medical director), under the authority of this guideline.
- This includes the authorization to use force (i.e. restraints or sedative medications) to allow delivery of a patient to a physician (i.e an emergency department).
- Basically, **you do not need anything signed to hold a patient against their will to allow them to be evaluated.**
- If you utilize this guideline, **you must clearly document the reasons why you are holding/ transporting a patient against their will.** This can include statements directly from the patient or from bystanders with a vested interest in the patient (i.e. "he told me…..") or other evidence of mental illness or serious emotional disturbance (suicide notes, social media posts, text messages, etc.).

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Review of the Tennessee Annotated Code

- **Title 33** of is the *entire section* on “Mental Health and Substance Abuse and Intellectual and Developmental Disabilities”. It encompasses the entire breadth of state statutes on mental and behavioral health.
- Within the Title 33, involuntary holds are under **Chapter 6 (Mental Health Service), Part 4 - Emergency Involuntary Admission to Inpatient Treatment,** which includes the following sections:
    - § 33-6-401. Emergency Detention
        - States that if a person “poses an immediate substantial likelihood of serious harm”, then they may be detained “to obtain examination for certification of need.”
        - This is the authority of law enforcement and healthcare personnel to hold a patient for the initial (i.e. ED) evaluation.
    - § 33-6-402. Detention Without Warrant Authorized
        - States that “if a [law enforcement] officer, a physician, a psychologist, or a [mental health worker] has reason to believe that a person is subject to detention under § 33-6-401, then [that professional] may take the person into custody without a civil order or warrant for immediate examination.”
        - That is, patients meeting the criteria in Section 401 may be held without the need for a formal (i.e. paper) “certification” or warrant to be signed until they are evaluated by a physician.
    - § 33-6-403. Admission to Treatment Facility
        - States that if less drastic alternatives to placement (i.e. outpatient resources) are unsuitable to meet the needs of the person, they “*may be admitted and detained by a hospital or treatment resource for emergency diagnosis, evaluation, and treatment.*”
        - This is the authority for the ED physician to hold a patient while awaiting transfer/evaluation in an inpatient psychiatric treatment facility.
    - § 33-6-404. Certificate of Need for Emergency Treatment and Transportation
        - This section outlines the process for formal psychiatric evaluation by a “physician, psychologist, or designated professional”, and outlines the requirement for the certification of need (CON) process.

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Adult or "Eligible Minor":

- Any person aged 18 or older is considered an ADULT.
- Anyone 17 years old or under is considered a MINOR, unless they:
  - Have been emancipated (by a court order)
  - Are in the military service of the United States (*active duty only*)
  - Are married
  - Are seeking treatment for
    - Pregnancy or sexually-transmitted disease
    - Drug or alcohol dependance
  - Or they are seeking treatment for their biological child (for whom they have legal custody)

- These criteria may vary slightly from state to state.
- Some states also designate an individual <18 years old who live apart from their parent/guardian and are financially self-supporting as "adults".

Designation of a Surrogate:

- If the patient does not meet the criteria of an "Adult" or "Eligible Minor", they generally can neither consent to, nor refuse, medical treatment.
- At that point decisions about medical care fall to a surrogate decision maker--generally this will be the parent or legal guardian for a minor, or a spouse or other appointed agent for an adult.
- If the agent or guardian is not reasonably available, the patient's surrogate shall be identified by the supervising healthcare provider and documented in the clinical record.

The patient's surrogate shall be an ADULT that also meets Decision Making Capacity (*as above*) who:

- Has exhibited special care and concern for the patient,
- Is familiar with the patient's personal values,
- Is reasonably available, *and*
- Is willing to serve.

Note: No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

Consideration may be given in order of descending preference for service as a surrogate to:

- The patient's spouse, unless legally separated;
- The patient's "adult" child;
- The patient's parent;

- The patient's "adult" sibling;
- Any other adult relative of the patient; or
- Any other adult who satisfies the requirements of a "surrogate" as above.

IMPLIED CONSENT:

- It is preferable for minors (or adults who do not meet Determination of Capacity [Z-XX]) to have a parent or legal guardian (or designated surrogate) who can provide consent for treatment on behalf of the individual.
- All states allow health care providers to provide emergency treatment when a surrogate is not available to provide consent. This is known as the "emergency exception rule" or "the doctrine of implied consent".
- For minors, this doctrine means that the prehospital provider can presume consent and proceed with appropriate treatment and transport if the following four conditions are met:
  - The child is suffering from an emergent condition that places his or her life or health in danger.
  - The child's legal guardian is unavailable or unable to provide consent for treatment or transport.
  - Treatment or transport cannot be safely delayed until consent can be obtained.
  - The prehospital provider administers only treatment for emergency conditions that pose an immediate threat to the child.
- As a general rule, when the authority to act is in doubt, EMS providers should always do what they believe to be in the best interest of the minor or incapacitated individual.

CAPACITY:

- The first step is determine if the patient/surrogate has the mental capability to
  - Communicate with EMS providers,
  - Comprehend the risks of illness/injury (as well as the benefits of care), and to
  - Make a rational decision in regards to allowing or refusing medical care.
- Orientation: Is the patient *generally* oriented and able/willing to communicate with the EMS provider?
  - *Person*: They should know their name, birthday, etc.
  - *Place*: They should have a generally understanding of where they are.
    - Should know the city/state/country.
    - They should be able to verbalize a general description of their location (i.e. "I'm at home", at "friend/family's house", at a business, on the street, etc.)

    - *Time*: They should generally know the month/year, and should know the approximate date/day/time *within reason*. (i.e. It is reasonable if they are off a day due to it being 1:00 AM).
- Event/Circumstances: They should show a reasonable understanding of the events:
    - Why is EMS present, how/who directed the response, etc.
    - Amnesia to the illness or injury due to transient decreased LOC (i.e. hypoglycemia, overdose, or concussion after head injury) is expected and does not affect decision making capacity.
    - Persistent confusion (i.e. repetitive questioning) after redirecting/explanation should be considered a deficiency in capacity.
- **Intoxication**: Is the patient acutely intoxicated or under the influence of drugs?
    - Do they show clinical signs of significant intoxication (e.g. disorientation, abnormal gait/ataxia, slurred speech, etc.).
    - Note: substance use/odor **by itself** does not imply clinical "intoxication".
- If there is any question, perform a full Mini Mental Status Exam (*below*), or contact online medical control.

INFORMED CONSENT:

- The second step is to verify that the patient/surrogate
    - Understands the nature of the illness or injury.
    - Understands the consequences of refusing care/transport.
- The patient/surrogate should **willingly listen** to the provider explaining concerns of and rationale behind:
    - Possible illness and/or injury that surrounds the event.
    - Benefits of on-scene evaluation, treatment and transport to an Emergency Department or other designated facility.
    - Risks of refusing immediate evaluation, treatment and/or transport.
    - Options to re-initiate contact with the 911 provider(s), or to initiate personal contact with an Emergency Department or other healthcare provider.
- The patient/surrogate should be able to **communicate**
    - A reasonable understanding of the risks of refusal, including the possibility of a life or limb-threatening injury that if identified/treated may prevent the loss of life or permanent disability.
    - His/her reasoning for accepting or refusing medical care (i.e. religious beliefs, cost, etc.).

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MENTAL HEALTH EXCEPTIONS:

- The third step is to determine if the patient/surrogate displays thoughts or behaviors that
  - Prohibit decision-making capacity, or
  - Display a direct threat to the health or welfare of the patient or of others.
- Suicidal/homicidal thoughts or actions:
  - Does the patient admit to thoughts of harming themselves or others?
  - Have they displayed behavior that would reasonably lead to the death or disability of themselves or others?
    - This includes “credible” reports from friends, family, bystanders, etc. of verbalization or actions of the patient indicating SI/HI.
    - Document any intentional action (including notes, social media posts, etc.) that would indicate harm to self or others.
    - NOTE: Self mutilation that is not an attempt to kill oneself--such as “cutting” to relieve anxiety--is not considered a suicidal gesture, but the patient should be transported unless discussed with online medical control or on-site licensed mental health provider.
- Psychosis/Hallucinations/Delusions:
  - Does the patient show signs of **acute** psychosis?
    - “Acute” = new onset or chronic hallucinations/delusions that have significantly worsened.
    - “Psychosis” can include auditory/visual hallucinations or delusions (paranoid, grandiose or other irrational thoughts).
    - For patients with chronic psychosis (schizophrenia), these thoughts/hallucinations are generally considered an “acute” if they are preventing the individual from being able to take care of their basic needs or putting them/others at an unreasonable risk of harm.

Notes:

- **Capacity** is the ability to learn, process, and make decisions based on information given. In EMS, this means the patient has the capacity to understand the risks, burden (financial and otherwise), and the benefits and alternatives to the proposed treatment (called medical decision-making capacity).
- **Competence** is a legal (not medical) term, stating that a court of law has decided whether a person can make their own decisions.
  - Competence is determined by a judge, not an EMS provider.
  - A known legal incompetence ruling can favor a future lack of decision-making capacity, but a

patient may retain his legal "capacity" regarding medical matters, even if deemed incompetent regarding, for instance, financial decisions.

- A legal declaration of incompetence may be global, or it may be limited (e.g., to financial matters, personal care, or medical decisions). A surrogate should be named and have appropriate paperwork in these situations (i.e. Medical Power of Attorney).

Example: **Dementia**

A patient may carry a diagnosis of dementia, but still, have the capacity for medical decision making. The diagnosis may prompt the EMS provider for a more careful evaluation of capacity, but the diagnosis does not exclude capacity. The provider must assess each situation carefully and always default toward beneficence if there is some question.

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Mini Mental Status Exam:		
1.	Orientation to time – time of day, day, week, month, year.	5 pts max
2.	Orientation to place – building, street, city, state, country.	5 pts max
3.	Say “boy, dog, ball”, and have the patient repeat it.	3 pts max
4.	Ask the patient to spell “W-O-R-L-D” backward, or do serial 3’s backward from 20 [20,17, 14, 11, etc.].	5 pts max
5.	(*Without repeating the words*) ask them to repeat the previous three words [boy, dog, ball].	3 pts max
6.	Ask the patient to do the following: “stick out your tongue and touch your right hand to your left ear.”	3 pts max
7.	Ask the patient to identify your pen and watch.	2 pts max
8.	Ask the patient to read the following sentence then do as it says: “Shut your eyes”.	1 pt
9.	Ask the patient to write a sentence.	1 pt
10.	Ask the patient to draw two overlapping pentagons (show them an example).	1 pt
A score of **21 or better** is considered mentally competent by most psychiatrists for a patient to make reasonable decisions.		*Total Score (max 29)*