



Verbal Consent Options

Verbal consent is only allowed under certain circumstances:

- 1) When a patient is physically present but unable to sign (e.g., due to physical limitation) and a legal representative is not available to sign on their behalf
- 2) When consent is being collected during a telehealth visit**

Most facilities already have guidelines (“policy”) and a process that they employ to obtain and document consent. HeC advises facilities to follow their internal policies, noting that such policies shall comply with all requirements of Privacy and Security Policies.

If a facility does not already have a process, HeC recommends the facility consider the following guidelines when developing a policy for documenting consent when a patient cannot sign a consent form due to one of the circumstances noted above.

- HeC advises facilities to use the 2-witness approach—meaning that 2 individuals need to witness the patient’s response, either verbally, head movement, or some distinguishable way. It should be noted on the paper consent form or stored electronically in the EHR that the patient was unable to sign the form and how the consent was communicated. The facility may consider using a 2-witness approach that aligns with the facility’s workflow. Some options include:
 - The scheduler may obtain the consent and act as a witness and note the patient’s choice
 - The staff member that calls to confirm the patient’s appointment may act as a witness and note/confirm the patient’s choice
 - The doctor or other healthcare professional conducting the telehealth visit may act as a witness and note/confirm the patient’s choice
- Your facility may also have other potential options, e.g., audio/video recording
- It is important to have a record of the consent for audit purposes.
- Remember to document the process being used

Alternative options to obtain consent may be used and are listed below. If any of these options are used, consent is valid when the completed consent (paper or electronic) has been received by the facility.

- Have patient sign a consent form the next time they visit the office in person
- Mail a copy of the consent form to the patient to be completed and returned
- Allow the patient to enter their choice in a patient portal

**Please note that there are certain disclosure and recordkeeping requirements related to, and limitations on verbal telehealth consent within NYS regulations. You can find these under the “Telehealth” policy heading here: https://www.health.ny.gov/technology/regulations/shin-ny/docs/privacy_and_security_policies.pdf. Consent obtained verbally shall be valid for the duration stipulated within the above referenced policy and will vary depending on the individual circumstance.