

65-4974. Research protocols; informed consent of adults and emancipated minors. (a) In accordance with the provisions of 21 C.F.R. § 56.101 et seq., and amendments thereto, and 45 C.F.R. § 46.101 et seq., and amendments thereto, in the case of an adult or emancipated minor who: (1) Is being treated by a person licensed to practice medicine and surgery and who has medical staff membership with a medical care facility, as defined in K.S.A. 65-4921, and amendments thereto, that has its own, or contracts with, an independent institutional review board; and (2) is incapable of giving informed consent for the research protocol, which has been approved by an institutional review board, the research protocol may proceed upon obtaining the informed consent of the adult or emancipated minor's legal guardian or the attorney in fact with the authority to make health care decisions for that person pursuant to K.S.A. 58-625 et seq., and amendments thereto.

(b) If neither of the designations described in subsection (a) has been made or neither of the parties described in subsection (a) can be contacted using reasonably diligent efforts, any member of the adult or emancipated child's family, in the order listed in this subsection, who has the capacity to provide informed consent and can be contacted using reasonably diligent efforts may provide informed consent to a research protocol, as described in subsection (a). The order of priority for family members to provide consent is as follows:

- (1) The adult or emancipated minor's spouse, unless they are legally separated;
- (2) an adult child;
- (3) a parent; or
- (4) an adult relative by blood or marriage.

(c) Nothing in this section shall authorize a legal guardian, attorney in fact with the authority to make health care decisions or family member authorized to provide informed consent pursuant to subsection (b) to provide informed consent as to research protocols that are contrary to the incapacitated person's permission, expressed orally or in writing, regarding such research protocols.

History: L. 2004, ch. 109, § 1; July 1.