§ 80.07 Procedures of the committees and panels.

(a) The committee shall receive declarations filed on behalf of patients, as follows:

1. A declaration may be filed by a declarant on behalf of any patient, residing within the geographic area served by the committee, who is believed to be in need of major medical treatment and to lack the capacity to consent to or refuse major medical treatment. Jurisdiction by the surrogate decision-making committee may continue throughout all subsequent proceedings related to the major medical treatment proposed in the initial declaration notwithstanding the patient's transfer outside of the geographic region or discharge from the facility.

2. A declaration shall be signed by the declarant and shall state the following:

(i) the patient does not have a parent, spouse, adult child, committee of the person, conservator or legal guardian, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter; or that the patient's parent, spouse, adult child, committee of the person, conservator, legal guardian, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter is willing to allow the panel to act upon the declaration;

(ii) the reasons for believing that the patient lacks the capacity to consent to or refuse major medical treatment and the factual and professional basis for this belief, which may include an independent evaluation by a person qualified to assess the patient's capacity to make such medical decisions;

(iii) a description of the proposed major medical treatment and of the patient's medical condition which requires such treatment; the risks, alternatives and benefits to the patient of such treatment; a statement of declarant's opinion of whether the best interests of the patient would be promoted by such treatment and the basis for the opinion; the patient's view of the proposed treatment, if known; and such other information as may be necessary to establish the need for such treatment.

(b) Upon receipt of the declaration, the committee shall send a copy of the declaration forthwith to the patient and to the patient's parent,

spouse, adult child, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter, committee of the person, conservator, legal guardian or correspondent, if known, the director of the patient's residential mental hygiene facility, if any, or such director's designee and the mental hygiene legal service which serves the same region as the committee. The chairperson of the committee or his or her designee shall assign the declaration to one of its panels, whose members will also receive a copy of the declaration. The declaration shall be accompanied by a notice of the time, place and date of the panel hearing on the declaration. The hearing shall be scheduled no earlier than five days after such declaration is sent, except where medical circumstances require a more immediate hearing or where the consent of the patient's parent, spouse, adult child, committee of the person, conservator, legal guardian or correspondent, if known, the director of the patient's mental hygiene residential facility, if any, or such director's designee and the mental hygiene legal service has been obtained for conducting a more immediate hearing. The notice shall inform recipients of the procedures of the panels, including the opportunity for the recipient to be present and to be heard.

(c) The declaration shall, prior to the date of the panel hearing, be reviewed by the panel chairman or his designee to ascertain whether additional information may be necessary to assist the panel in determining the patient's need for surrogate decision-making and in determining whether the patient's best interests will be served by consenting to or refusing major medical treatment on the patient's behalf. The panel chairman or his designee may:

1. Request and shall, notwithstanding any other law to the contrary, be entitled to receive from any physician, mental hygiene facility or health care facility or person licensed to render health care, any information which is relevant to the patient's need for surrogate decision-making or for the proposed major medical treatment. Information, books, records or data which are confidential as provided for by law shall be kept confidential by the panel and any limitations on the further release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the panel.

2. Order an independent assessment of the patient, or of information concerning the patient, to be undertaken, including obtaining an independent opinion, where such independent assessment or opinion is determined by the panel chairman to be necessary.

3. Consult with any other person who might assist in such a determination of the best interests of the patient, including ascertainment of the personal beliefs and values of the patient.

(d) The panel shall conduct a hearing, at which the patient, any other person requested by the patient to appear on his or her behalf, and the mental hygiene legal service have the right to be present and to be heard. Where practicable, the panel members shall personally interview and observe the patient prior to making their decision. The panel shall be empowered to administer oaths to and to take testimony from any person who might assist the panel in making its decision. Such hearing shall be recorded and any information, record, assessment or consultation submitted to or considered by the panel shall be maintained as part of the record of the deliberations of the panel. Formal rules of evidence shall not apply to the proceedings of the panel.

(e) The panel shall make a determination, based on clear and convincing evidence, as to whether the patient is in need of surrogate decision-making; provided, however, that minor patients shall be deemed to lack such capacity, to the extent that minors generally are deemed to lack such capacity. Unless three panel members concur in the determination that the patient is in need of surrogate decision-making, the patient shall be deemed not to need surrogate decision-making. In such event, a record of such determination shall be made and the patient's consent to such treatment, if given, shall constitute legally valid consent.

(f) For any patient determined to be in need of surrogate decision-making, the panel shall make a further determination as to whether the proposed major medical treatment is or is not in the best interests of the patient based on a fair preponderance of the evidence; provided, however, that evidence of a previously articulated preference by the patient concerning the proposed treatment shall be given full consideration by the panel. The panel shall provide a record of its

determination which consents to or refuses major medical treatment on the patient's behalf, which shall reflect the opinion of at least three of the panel members. If the panel determination consents to such treatment, such consent shall constitute legally valid consent to such treatment in the same manner and to the same extent as if the patient were able to consent to or refuse such treatment on his or her own behalf.

(g) If at anytime during the pendency of a proceeding, a parent, spouse or adult child, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter objects to the panel acting upon the declaration or a committee of the person, conservator or legal guardian who is legally authorized to consent to or refuse such treatment on the patient's behalf, objects to the panel acting upon the declaration, the proceedings regarding such patient shall cease. A record of such person's objection shall be included as part of the record as provided for by this section.

(h) A copy of any determination made pursuant to this section shall contain a statement describing the right to appeal set forth herein and shall promptly be sent or provided to the patient; other persons requested by the patient to appear on his or her behalf; declarant; parent, spouse, adult child, legal guardian, committee of the person, or other available surrogate authorized by regulation in accordance with section 33.03 of this chapter or, in the absence of such persons, known correspondents of the patient; the director of the patient's mental hygiene residential facility, if any; and the mental hygiene legal service. Where practicable, the panel shall reach its determination or determinations at the time of the hearing and provide notice to the above persons forthwith. The terms of such determinations and the giving of such notice shall be made a part of the record. The decision shall state when the consent shall become effective after such determination has been provided or mailed to the parties specified in this section. The panel may delay the effective date of its decision for up to five days in order to enable an objecting party to exercise the right of appeal, pursuant to section 80.09 of this article.