

INFORMED CONSENT PROVIDER INFORMATION 050608



Healthcare Consent Guidelines for Youth in DCS State Custody

*You are seeing a youth in the legal custody of the Tennessee Department of Children's Services. Unless the parents' rights have been terminated, DCS is merely the legal custodian – **not** the youth's legal parent or guardian. The parent(s) or guardian(s) have the legal authority to determine healthcare when their youth is in DCS custody. DCS policy is to involve the youth's parent or legal guardian in healthcare decision-making for the youth when possible and in the best interest of the youth. The DCS representative who is present at this appointment will be able to inform you of the guardianship status of the youth and persons responsible for making healthcare decisions.*

EMERGENCY HEALTHCARE (medical and behavioral) - The parent/legal guardian, DCS case manager, contract agency caseworker, or foster parent determine consent at the time care is needed. A licensed physician may perform emergency medical or surgical treatment on a youth without consent if the physician has a good faith belief that delay of care would result in serious threat to life or serious worsening of the youth's medical condition.

ROUTINE HEALTHCARE (medical and behavioral) - The parent/legal guardian, DCS staff or foster parent present determine consent (as representative of the legal custodian) for *ordinary and routine care*. *Extraordinary or non-routine* treatment will require the parent/legal guardian to determine care. If the parent/legal guardian is unavailable, DCS staff will consult their legal counsel for assistance in determining appropriate steps for consent. This may involve a hearing in juvenile court for the judge to order the extraordinary or non-routine medical care.

Note - If the youth is 14 years of age or older, Tennessee law presumes that they have the maturity to decide medical care, but this is determined on an individual case basis by the provider.

SURGERY - The parent/legal guardian determines consent. If the legal guardian cannot or will not be available or if termination of parental rights has occurred, then the DCS Regional Nurse has the responsibility of determining consent for *ordinary and routine surgery*. *Extraordinary surgical procedures* will require an order of the juvenile court (if the parent/legal guardian is unavailable or parental rights have been or are being terminated).

PSYCHOTROPIC MEDICATION - The parent/legal guardian determines consent if the youth is less than 16 years of age. The parent/legal guardian or legal custodian for a youth 15 years of age and under can consent to disclosure of the youth's confidential information. DCS has asked that the parent be present for this appointment or available by telephone to decide the care of the youth. If the parent cannot or will not be available to determine consent or if termination or parental rights has occurred or is in process, then the DCS Regional Nurse has the responsibility of determining consent. He or she is available by telephone (the number can be provided to you by the DCS representative present). The appropriate informed consent form may be faxed to him/her (again the number will be provided) for signature prior to initiation of medication usage. **The DCS Regional Nurse, as the representative of the legal custodian and acting in place of the parent,** may contact you with questions concerning diagnosis, nature and purpose of proposed treatment, risks and benefits of proposed treatment, alternative

treatments, risks and benefits of alternative treatment, and risks and benefits of receiving no treatment.

Note - If the youth is 16 years of age or older, he or she has the same rights as adults with respect to outpatient and inpatient mental health treatment medication decisions, and confidential information (TCA 33-8-202). The youth has the right to determine parent involvement, including any use of medication. An outpatient facility or professional may provide treatment and rehabilitation without obtaining the consent of the parent, legal guardian, or legal custodian. We ask that appropriate DCS documents indicating the youth's consent to treatment be forwarded to the DCS Regional Nurse or Youth Development Center Nurse for tracking purposes.

EXCEPTIONS to parent/legal guardian/legal custodian determination of medical care

- Youth 16 years of age or older for mental health treatment
- “Mature” 14 year old youth, determined on individual case basis by provider
- Treatment of juvenile drug abuse, a physician may use his/her own discretion in notification of the youth's parents
- Prenatal care of a minor, a physician may use his/her discretion in notification of the youth's parents
- Contraceptive supplies and information
- Treatment of sexually transmitted diseases
- Emergency medical or surgical treatment

TREATMENT REFUSAL by parent/legal guardian or youth (14 years of age or older)

You, as the health care provider, in consultation with DCS will determine:

- if the treatment or procedure is medically necessary,
- if the youth may be harmed if he/she does not receive the treatment or procedure, and
- if DCS determines that the treatment is necessary to protect the youth from harm,

THEN DCS will contact the local DCS attorney regarding the need for judicial intervention.

We hope these guidelines are informative and helpful in your care of this youth and we thank you for the clinical services you are providing.