OVERVIEW

When a child comes under the jurisdiction of a court under MCL 712A.2(b), and remains a temporary court ward, parental or court authorization for medical treatment is required unless the medical care is routine or emergency medical care.

During child protective proceedings, absent a termination of parental rights, parents maintain the right to consent to medical care for temporary court wards. Yet, courts may enter orders of disposition that are appropriate for the child, including providing children with medical, dental, surgical, or other health care. MCL 712A.18(1)(f). However, the nature and urgency of medical intervention along with the accessibility or refusal to consent by the parent impacts who can authorize medical care and whether court authorization is necessary.

TYPES OF MEDICAL CARE AND AUTHORIZATION

When a child is placed in out-of-home care, it is important to involve the parent(s) or legal guardian(s) in the child's medical, dental, developmental, and mental health care. Case planning activities require case managers to solicit health information from the child's parent(s) or guardian(s) regarding the child's medical history and preferences for health care to complete the medical passport.

Attempts for parental consent should be requested for routine, non-surgical medical care, and non-emergency surgical treatment.

Note: It is important the case manager discusses routine medical care, as stated below, with the parent(s).

DHS-3762, Consent Authorizing Routine and Emergency Care

The court, placement foster care agency or the department making the placement must provide a written document (MCL 722.124a) investing the foster parent, relative caregiver, childcare institution (CCI) or any other foster care provider with authority to:

- Consent to routine, non-surgical medical care.
- Consent to emergency medical and surgical treatment.

To ensure there is no unnecessary delay in securing medical care for children in foster care, MDHHS and any foster care provider must ensure the caregiver(s) have received the DHS-3762, Consent to Routine, Non-surgical Medical Care and Emergency Medical or Surgical Treatment. The card provides authorization for the foster care provider to consent to routine and emergency medical care for the child in their care.

The authorizations allowed under MCL 722.124a(1) begin as soon as a child is removed from parental care and placed with MDHHS. As a result, once a family court places a child in foster care or other out-of-home living arrangement, the court has statutory authority to order medical care for a child. The court's authority to override a parent's expressed wishes increases once a parent is adjudicated as unfit.

See the Medical Authorization and Hospitalization at a Glance Chart for a breakdown of the consent authority for each legal status.

Routine, Non-Surgical Medical Care

For the foster care provider to access health care for the child, the case manager must provide the child's foster care provider with the following health cards:

- Child's Medicaid card.
- DHS-3762 card.
- Child's Medicaid Health Plan card, as applicable.

Each child in care must be enrolled in Medicaid (MA) and have an assigned MA recipient ID number to ensure prompt health services at the time of placement. The foster care provider is given the DHS-3762, Consent to Routine, Non-surgical Medical Care and Emergency Medical or Surgical Treatment, which allows the provider to take the child to the doctor and respond to emergencies. The DHS-3762 is completed by the case manager placing the child and the case manager must enter the child’s MA number on the card, if child is already on MA.

If a child is not active on MA at the time of placement, the foster care provider must receive the MA card or alternative verification of

the child's MA status and recipient ID number within 30 calendar days of the date a child enters foster care.

For any subsequent placement, the foster care provider must receive the child's MA card, or alternative verification, if necessary, and the DHS-3762 prior to or upon the child's placement.

The case manager must obtain the child's MA card from foster care providers to pass on to the new foster care provider at the time of the child's replacement or to the parent(s) or legal guardian(s) when child is returned home.

Medical Card Receipt Requirement

The date to be documented in the electronic case management record should be the date the foster parent was provided with the MA card and/or MA number. The case manager must provide the DHS-3762 to the foster parent. This must be documented in the placement detail screen of electronic case management record by checking the applicable box and entering the date the cards and MA number were provided.

Parental Engagement and Health Care

Although the DHS-3762 authorizes consent for routine medical care, it is important to continue engaging the child's parent(s) or legal guardian(s) in the child's ongoing medical, dental, developmental, and mental health care and treatment. The consent authorizing routine health care does not negate parental involvement. Ideally, the parent should be present at all health appointments. The case manager is responsible for facilitating the parent's or legal guardian's involvement in health care appointments, including attempts to accommodate the parent(s) and school with arranging transportation. See *parental involvement* in the Overview of this policy item regarding parent(s) or legal guardian(s) participation in child's health care appointments.

Routine, Non-surgical Medical Care Defined

Routine, non-surgical medical care is broadly defined and may include but is not limited to:

- A comprehensive health assessment and physical exam.

- Dental exam and procedures including cleaning, filling, or extraction of teeth.
- Developmental/behavioral assessment.
- Laboratory services for hematocrit, hemoglobin, urinalysis, hereditary/metabolic, or other needed testing as determined by the physician.
- Blood pressure for children aged three and over.
- Age-appropriate unclothed physical examination.
- Age-appropriate screening, testing, and immunizations.
- Immunization review and administration.
- Blood lead testing for children under six years of age.
- Mental health assessment, evaluation, counseling, and therapy.
- Psychological evaluations for children experiencing emotional disturbances. In re Trowbridge, 155 Mich App 785, 787-788 (1986).
- Nutritional assessment.
- Preventive health services.
- Treatment of communicable diseases.
- Vision and hearing tests.
- X-rays.
- Routine suturing and minor lacerations.
- Sleep studies.
- Occupational, physical and speech therapy.

Note: For the parent(s) or the legal guardian(s) of temporary court wards who object to required immunizations based on religious or philosophical grounds, refer to *Nonmedical Waivers* and *Parental Objection* within this policy item. When a parent explicitly objects to

their child receiving routine immunizations, the court can issue orders during the dispositional phase overriding the parents and ordering immunizations. The trial court has the authority to order vaccination of a child when the facts proven and ascertained demonstrate that immunization is appropriate for the welfare of the juvenile and society. In re Deng, 314 Mich App 615 (2016), lv denied, 500 Mich 860 (2016); see FOM 801-02, Immunizations.

Exclusions from Routine, Non-Surgical Medical Care

Routine, non-surgical medical care does **not** include:

- Psychotropic medications; see FOM 802-1, Psychotropic Medication in Foster Care.
- Clinical trials.
- Non-emergency elective surgery.
- Contraceptive treatment, services, medications, or devices. MCL 722.124a.
- Participation in the Waiver for Children with Serious Emotional Disturbance (SEDW).
- General anesthesia for any procedure including dentistry.

Authorization for Clinical Trials

Clinical trials and new therapies, procedures, or treatments for any type of human research involving children in foster care **requires** parental informed consent for temporary court wards, Michigan Children's Institute (MCI) superintendent consent for MCI wards, and judicial consent for permanent court wards. The MDHHS medical consultant will review all MCI requests.

Note: In the absence of parental consent court authorization is necessary. Child placing agencies (CPA) cannot consent to a child's participation in clinical trials.

Emergency Medical Care

Emergency medical care is not defined in the Child Protection Law or Juvenile Code. Staff must defer to health professionals and the Emergency Medical Treatment and Labor Act (42 U.S.C § 1395dd(e)(1)) on whether the child's medical issue gives rise to emergency care.

According to the American Academy of Pediatrics (AAP), emergency care for a child should not be delayed because of issues getting consent. By law, this is allowed under the emergency exception rule or the doctrine of implied consent. The rule applies if the following conditions are met:

- The child is suffering from an emergent condition that places their 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 professional administers treatment for emergent conditions that pose an immediate threat to the child.

Beyond saving a life or preventing permanent disability, the treatment of fractures, infections, pain, and other similar conditions are broadly considered emergent conditions that require treatment.

Psychiatric Care and Inpatient Mental Health Care

For emergency psychiatric treatment, court authorization is not necessary for the request of admission itself. A minor's parent, guardian, or a person in loco parentis may request emergency admission if they believe the minor needs psychiatric treatment and presents as a danger to their self or others.

The Mental Health Code defines the term person in loco parentis as a person who is not the parent or guardian of a minor but who has legal custody of a minor. When a minor is removed from the custody of their parent or guardian and is placed by a court order

with MDHHS for care and supervision, MDHHS or its designee is deemed a person in loco parentis.

If the appropriate health professionals determine that emergency admission is necessary, the minor may be hospitalized without needing a court order.

Court authorization is necessary for non-emergency psychiatric admission with the non-emergency being determined by health professionals. Psychiatric treatment is distinct from general medical treatment; the immediate consent authority for routine/emergency medical care in MCL 722.124a does not apply to hospitalization for psychiatric treatment.

Note: The legal consenter for psychotropic medication is based on the legal status of the child, even when the minor was admitted on an emergency basis without a court order; see FOM 802-1, Psychotropic Medication in Foster Care, Authority to Consent to verify who can provide consent for psychotropic medication.

Consent for Non-Emergency Elective Surgery

MDHHS may not consent to non-emergency and elective surgery for temporary court wards. Only the child's parent(s) or legal guardian(s) may consent to non-emergency elective surgery unless parental rights have been terminated by court action. If the parent's whereabouts are unknown and consent is not given, a court order must be obtained.

Consent for Non-Emergency Elective Surgery for MCI Wards

Consent from the MCI superintendent must be pursued, and MCI authorization received for non-emergency and elective surgery for MCI wards. Two weeks prior to the planned surgical procedure, the case manager must submit the following to the MCI superintendent:

- A written request from the physician that explains the surgical procedure and includes:
  - The benefits and risks of the surgery.

  - An explanation of the need or requirement for the surgery.
  - The expected outcome.
  - The consequences if the surgery is not performed.

- A copy of the commitment order.

- The appropriate consent forms from the hospital, such as consent for surgery, consent for anesthesia, etc. The forms must be submitted in advance of the surgery date.

Upon review of the above information, the MCI superintendent will approve or deny the request and return the consent forms to the case manager. In the absence of the MCI superintendent, one of the MCI consultants within MDHHS may be designated as acting superintendent and authorized to approve or deny consents.

Health Consents and Young Adults Aged 18

At age 18, children in foster care reach the age of majority and are legal adults. MCL 722.52. Regardless of legal status, necessary medical consents for health care are to be signed by the young adult. However, if the young adult is physically or mentally incapacitated and unable to make their own health decisions, it is in the young adult's best interest for a guardian ad litem or other guardian to be appointed by the court to assist with health consents and decisions.

Consent to Substance or Pregnancy Testing

During medical treatment, if a physician recommends testing for substances or pregnancy to diagnose and determine medical condition of child in foster care, the temporary court ward and their parents should be informed and given an opportunity to consent.

A minor who professes to having a substance use disorder may consent to their own treatment. Under those circumstances the minor's consent is given effect as if the minor had achieved the age of majority. A minor may not at a later time, after giving consent, indicate that consent was not valid by reason of that minority. MCL 330.1264.

A minor may consent to prenatal or pregnancy related care. The consent of others, including the putative father of the child or a spouse, parent, guardian, or person in loco parentis, is not necessary to authorize the provision of pregnancy related health care to a minor. MCL 333.9132.

Disagreements should result in family team meetings and be addressed in court.

Withdrawal of Life Support

Absent parental consent, court authorization is necessary for a withdrawal of life support for temporary court wards.

BIRTH CONTROL AND CONTRACEPTIVES

Contraceptive treatment is excluded from routine, non-surgical medical care. MCL 722.124a. However, there are no specific Michigan statutes or laws on the provision of birth control or need for parental or guardian consent.

Federal statutes address the minor's right to contraceptives without consent from the parent(s) or guardian(s). Courts have interpreted Title X of the Public Health Service Act and the Medicaid law (Title XIX) to require the provision of confidential contraceptive services to minors. 42 USC §300(a); 42 USC §1396d (a)(4)(C).

When health care providers offer contraceptives to patients with MA insurance or through programs funded by the Public Service Act, such as Planned Parenthood, they may not require parental consent or notification. In addition, the federal constitutional right to privacy protects an adolescent’s decision to attempt to avoid unwanted pregnancy. Carey v. Population Services Int’l, 431 US 678 – 1977.

Provider discretion applies for health care providers not funded by Title X or Title XIX. Doctors accepting private health care coverage may require parental consent prior to providing contraceptives to minors.

LEGAL AUTHORITY

Federal

42 USC 1395dd(e)(1) Emergency Medical Treatment and Labor Act

State

MCL 330.1264

MCL 330.1498c(a)

MCL 330.1498d(3)(a)

MCL 330.1498h(1)

MCL 333.9132

MCL 722.124

MCL 722.124(a)

MCL 722.124(a)(1)

MCL 722.124(a)(3)

POLICY CONTACT

Questions about this policy item may be directed to the Child Welfare Policy Mailbox (Child-Welfare-Policy@michigan.gov).