



Medical Consents for Children and Adolescents in Foster Care

This chapter is not designed to be an exhaustive discussion of medical consents for children and adolescents in foster care, but rather an introduction and a guideline. This is a complex area, governed by clearly defined legislation and regulations that vary from state to state. In addition, foster care agencies have developed individual policies interpreting these laws and regulations. Health care professionals are advised to become familiar with the policies of their particular agencies and contact an administrative or legal official at the agencies when questions or concerns about consents arise. If agencies have a health care management team, the administrator of that team should be able to offer health care professionals guidance on consent issues.

In this chapter, birth parents refers to birth parents and legal guardians, and agencies includes private foster care agencies and local social service agencies.

General Principles Governing Medical Consents

Children and adolescents in foster care are in the care and custody of local or state commissioners of social services. Legal guardianship remains with birth parents unless children are freed for adoption.

Generally speaking, the local or state commissioner of social services has the ability to consent for routine medical treatment for children and adolescents in foster care, either because of statute or because the birth parents signed a general medical consent giving the commissioner this authority.

Commissioners are committed to the principle that, whenever practical or possible, the birth parents of the child or adolescent should make all-important decisions and grant consent on behalf of their child. At individual agencies, policies usually are in place requiring the agencies to ask birth parents to give consent for medical care, so as to involve them in the health care needs of their children. However, if birth parents are unavailable or uncooperative, then by statute or previously signed general medical consents, agencies can approve medical procedures for which written consent is required and which are deemed to be in the best interests of children or adolescents. Best practice is to make sure that the agencies and birth parents are aware of and have specifically consented to medical procedures requiring informed consent.

Commissioners may delegate the authority for medical consent to other child welfare personnel. Agencies vary as to who has the authority to consent for medical care. Generally, caseworkers would have to seek at least supervisory authority for any medical procedure requiring written consent. Any procedure normally requiring informed consent would require the consent of an administrative figure or committee in lieu of the birth parents. Sometimes agencies may take a matter before a judge when birth parents oppose a medical intervention deemed to be in the best interests of children or adolescents.

Generally, foster parents do *not* have the authority to provide consent for medical procedures and are required to seek approval from agencies.

Frequently Asked Questions

This information varies from state to state; health care professionals are urged to contact their state foster care agencies to determine the guidelines for their own states.

Who May Give Medical Consent for Children and Adolescents Freed for Adoption?

When children or adolescents have been freed for adoption (voluntarily by parents or involuntarily through termination of parental rights), they no longer have parents with any legal rights, and the local or state commissioner becomes their legal guardian. Only the commissioner or designated child welfare personnel can consent for medical procedures on behalf of children or adolescents freed for adoption.

Who May Give Consent for Human Immunodeficiency Virus Testing for Children and Adolescents in Foster Care?

There are specific and quite detailed procedures in regulations and individual agency policy for consent for human immunodeficiency virus (HIV) testing of children and adolescents in foster care, and these vary from state to state.

Who May Give Consent for Reproductive and Related Services for Children and Adolescents in Foster Care?

In some states, if a health care professional determines that a minor has the capacity to consent, the physician must seek the consent of the minor for medical services related to reproductive health, sexually transmitted diseases, HIV testing, and substance abuse. This is similar to how a physician would handle these circumstances for a minor not in the foster care system. The health care professional is advised to discuss this issue with his or her state health department. Foster care regulation may differ from state health law on this topic, and the health care professional should seek guidance as to which takes precedence.

How Does the Status of a Child or Adolescent in Foster Care Affect Who May Give Consent?

Most children and adolescents are in *involuntary foster care placement* for reasons of child abuse or neglect. While birth parents may give

consent for medical procedures in such circumstances, consent always should be obtained from agencies in addition to or in lieu of birth parents. The agencies always should attempt to engage birth parents in these issues.

For children who are in *voluntary foster care placement* or placed because of Person in Need of Supervision (PINS) or juvenile delinquency status, the birth parents or agencies may provide consent. In these situations, agencies attempt to seek consent from birth parents. However, agencies should have obtained a general medical consent at the time of placement and may consent on behalf of children, if necessary.

Only agencies may consent for medical care for children freed for adoption. In some instances, adults between the ages of 18 and 21 years may still be in foster care, and agencies may have specialized consent policies for them.

Are There Situations in Which Consent of Birth Parents Is Not Required, Even for Children and Adolescents in Voluntary, PINS, or Juvenile Delinquency Placement?

The consent of birth parents is not required if the time necessary for seeking consent would present a danger to the life, health, or immediate welfare of a child or adolescent, or a physician believes this to be the case.

How Does the Category of Medical Care Affect Whether Written Consent Is Required?

Specific written consent may not be required in some states for

- Urgent medical care, described as medical, mental health, and dental services that must be instituted immediately to prevent danger to a child's life
- Services customarily given as part of preventive health care and care for ordinary childhood diseases and illnesses

Efforts always should be made to inform all interested parties about such care (eg, foster parents, birth parents, agency personnel).

Specific written consent is, in general, required by most states for

- Nonurgent or elective medical care described as elective medical and dental services that are not customarily given as part of preventive health care. This includes any service or intervention requiring informed consent (eg, surgery, chemotherapy, contrast agents, anesthesia). Health care professionals should contact administrative or legal personnel at foster care agencies when written consent is indicated.
- The prescription of psychotropic medication requires written consent for each individual medication.
- Mental health agencies usually require specific written consent for performing evaluations and providing services.

Are There Any Particular Safeguards That Health Care Professionals Should Undertake Concerning Consent for Medical Care for Children and Adolescents in Foster Care?

Primary care physicians should be provided with a copy of general medical consents for children and adolescents in foster care or should seek copies of them from foster care agencies.

For procedures or interventions requiring specific written consent, health care professionals always should contact administrative, legal, or health care management personnel at foster care agencies. It is then the agencies' responsibility to facilitate the consent process.

It is prudent to document any specific discussions about medical consent for a procedure or intervention in the patient's chart.

What if a Child or Adolescent in Foster Care Needs Medical Intervention Requiring Consent After Hours or While on a Holiday?

There always should be someone available from foster care agencies 24 hours a day, 7 days a week. Health care professionals are advised to contact the agencies.

Who Is the Consenting Party for the Medical Care of the Offspring of Adolescents in Foster Care?

If an adolescent is in foster care and has custody of his or her child who is not in foster care, the adolescent is the consenting party.

If the adolescent and his or her child are both in foster care and the adolescent resides with the child, either the adolescent or the agency may give consent, but the health care professional is advised to seek guidance from the agency about consent on behalf of the child.

If the adolescent and the child are both in foster care, but the child resides apart from the adolescent, the same rules apply as for other involuntary placements. The health care professional should contact the agency about consent.

Who Has Legal Guardianship When Children or Adolescents Are Placed With a Relative Resource (Often Called Kinship Care)?

Most often, legal guardianship continues to reside with birth parents unless there has been a court process transferring legal guardianship. If relatives indicate they have legal guardianship, they should have a document from the court stating that this is the case. Health care professionals should contact the agencies to clarify guardianship and the process for obtaining consent for health care.

Bibliography

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