TEXAS
Department of Family and Protective Services

Child Protective Services

Medical Consent Resource Guide

TABLE OF CONTENTS

Resource Guides

The purpose of Resource Guides is to provide information that helps you do your job better. This information includes reference material, procedures, and guidelines that help you complete the tasks you are required to do by policy.

It's important to remember that the information in Resource Guides ***does not substitute for policy***. We may sometimes include policy statements, but only to show you the policy to which the information is related. We will highlight any policy that actually appears in the Resource Guide, and will almost always include a link to the actual policy. For example:

> ***Per 4222.2 Re-Allowing Placement:***
>
> If the caseworker learns of a detailed justification for changing the status of and considering placements in a foster family that is on Disallowed Placement status, the caseworker must elevate this consideration through the regional chain of command to the regional director.

The policy in the handbook always takes precedence over what is in the Resource Guide. We try to keep policy and Resource Guides synchronized, but sometimes there is a delay. **If you have questions, always follow the policy in the Policy Handbook**.

Resource Guides provide important information on a range of topics, for the purpose of assisting and guiding staff to:

- make essential decisions
- develop strategies to address various issues
- perform essential procedures
- understand important processes
- identify and apply best practices

The information in the Resource Guides is not policy (except where noted), and the actions and approaches described here are not mandates. You should adapt the way you perform critical tasks to the individual needs and circumstances of the children and families with whom you work.

State office and field staff are working together to identify Resource Guide topics, define the content, and develop the appropriate guides. CPS will regularly post Resource Guides as they are developed, and update them as needed. Check the Resource Guides page, in the CPS Handbook, to see new or revised Guides.

We hope these Guides provide useful information to guide and assist CPS staff in effectively performing their job tasks. These Guides, combined with clear and concise policy in the Handbook, should help staff provide a high level of service to children in Texas.

MEDICAL CONSENT

See 11100 Medical Consent.

Texas law requires the court to specifically authorize an individual or DFPS to consent to medical care for each child in DFPS conservatorship.

In most cases, DPFS petitions the court to authorize DFPS to consent to medical care. Once the court does this, DFPS must then designate an individual as medical consenter.

In some cases, the court will, by court order, directly authorize someone other than DFPS to make medical decisions for the child or youth, including a youth who is at least 16 years of age. In these situations, DFPS must not designate a medical consenter or backup consenter other than the person authorized by the court, but DFPS must work with the authorized person to ensure the individual still complies with medical consent requirements. See 11120 Court Authorizes an Individual Other Than DFPS to Be the Child's Medical Consenter.

Medical care includes:

- physical;
- dental;
- behavioral; and
- allied health care.

Examples of allied health care are physical therapy, occupational therapy, speech therapy, dietetic services, and so on.

Medicaid/STAR Health generally covers medical care for children in DFPS conservatorship, but in some cases a service may be recommended that is not covered by Medicaid. A court or a health care practitioner may order a service for a child that the medical consenter or caseworker is unsure is appropriate or covered by Medicaid. If the medical consenter is not the caseworker, the medical consenter should consult with the caseworker before giving consent.

If further assistance is needed, the caseworker consults with the regional well-being specialist.

MEDICAL CONSENT EXCEPTIONS

Inpatient Mental Health and Substance Abuse Treatment

A medical consenter who is not a CPS employee may not request the admission of, or consent to the voluntary admission of, a child in foster care to a facility operated or licensed by the Department of State Health Services for inpatient mental health or substance abuse treatment (such as state hospitals or facilities that treat substance abuse) or private inpatient mental health or substance abuse facilities. Only DFPS may request the admission of, or consent to the voluntary admission of, a child in foster care to these kinds of facilities, and only with the child's consent.

Texas Health and Safety Code §§572.001(c), 462.022(c)

If the child does not agree with the admission DFPS must seek involuntary commitment.

ECI and Special Education Services

Federal law governs the provision of informed consent for Early Childhood Intervention (ECI) or special education services provided by an independent school district. While services such as physical or occupational therapy would be considered medical in most situations, federal law classifies them as early intervention, educational, or related services, if an ECI program provides them, or the school district for an eligible child provides them as part of a child's ECI or special education plan. The medical consent policy in 11100 Medical Consent does not apply to diagnostic testing or services provided by an ECI program or a school district, even if those services would be considered medical if provided elsewhere.

The person acting as the child's caregiver or "surrogate parent" has the authority to make ECI and special education decisions.

See also:

Early Childhood Intervention
15000 Education for Children

Abortion

Neither CPS staff nor medical consenters designated by DFPS to consent to medical care for a child in DFPS conservatorship may consent to an abortion.

However, the parent of a child whose parental rights have not been terminated may provide written consent.

For a child in DFPS conservatorship, see 6441 When a Youth in Substitute Care is Pregnant.

See 5750 Judicial Bypass to Notifying a Parent About Abortion.

DESIGNATING MEDICAL CONSENTERS

See:

11111 Selecting the Medical Consenter and Backup Medical Consenter
11112 Designating a Live-In Caregiver as the Medical Consenter
11113 Designating Medical Consenters for Children in Conservatorship Living in Residential Facilities

RECOMMENDED MEDICAL CONSENTER DESIGNATIONS WHEN COURT AUTHORIZES DFPS AS MEDICAL CONSENTER

The chart below is a quick guide to designating appropriate persons to perform as primary and backup consenters.

Child's Placement	**Recommended Designee First and Second Primary**	**Recommended Backup First and Second Backup**
GRO offering emergency services (emergency shelter)	Two Professional employee(s) of the GRO	• 3rd professional employee of the GRO; or • CPS caseworker; or • Supervisor of primary/assigned caseworker.
• CPA foster family home • CPA foster group home with foster parents (without shift staff) • CPA pre-consummated adoptive home	• Foster parents; or • Pre-consummated adoptive parents	Professional employee(s) of the CPA, such as a case manager
GRO offering child care services only (children's home with cottage model)	Cottage parents	• Alternate cottage parents; • Professional employee of the GRO, such as a case manager; or • CPS caseworker.
Home- and community-based services (HCS) family home	HCS-based support family caregivers	• CPS caseworker, or • Caseworker's Supervisor
• GRO operating as a residential treatment center (RTC)* • GRO offering therapeutic camp services (therapeutic camp) • GRO offering child care services only (group setting with shift staff)	1. 1st Primary: the CPS caseworker or Local Permanency caseworker 2. 2nd Primary: second CPS caseworker or Local Permanency caseworker	3. Any combination of the following individuals may be selected as the 1st and 2nd backup: • CPS caseworker; • Local Permanency caseworker; • CPS Supervisor; or • Local Permanency Supervisor. * In rare situations and with approval from the Local Permanency supervisor or designee, a Human Services Technician (HST) specially

		trained to consent to psychotropic medication.
• HCS-based group home (with shift staff) • Nursing home • Intermediate care facilities for Individuals with Intellectual Disabilities (ICF-IID)	1. CPS Caseworker 2. 2nd CPS Caseworker or CPS Supervisor	3. 3rd CPS Caseworker or CPS Supervisor 4. CPS Supervisor
• GRO offering treatment services for individuals with intellectual disabilities • State Supported Living Centers (SSLC)	1. Developmental disability (DD) specialist assigned as secondary worker 2. Primary CPS Caseworker or Caseworker's Supervisor	3. 2nd Developmental disability (DD) specialist 4. 3rd Developmental disability (DD) specialist or Primary CPS Caseworker
Placement with Relative or Kinship Caregiver	Primary live-in caregiver(s) for the child	Another person, relative or kinship individual that knows the child and has knowledge of his/her medical condition and needs

Youth Medical Consenter

Youth's Placement	**Recommended Designee First and Second Primary**	**Recommended Backup First and Second Backup**
Youth Medical Consenter – ALL	Youth named in the court order	None

DESIGNATING A LIVE-IN CAREGIVER AS THE MEDICAL CONSENTER

DFPS may designate the following live-in caregivers as medical consenters:

- birth parents, when a child is placed in the birth parent's home who are able to manage the child's medical care;
- kinship caregivers in a kinship care placement;
- foster parents in foster family and foster group homes (excluding foster group homes with shift staff);
- pre-consummated adoptive parents;
- cottage parents at GROs offering child care services only (children's homes); or
- family caregivers provided through home and community-based services (HCS), excluding HCS group homes with shift staff.

The caseworker designates both parents as primary medical consenters, with one partner designated as first primary consenter and the other as second primary consenter.

The caseworker may designate as backup medical consenters:

- another couple, or
- two individuals.

For example: a caseworker is placing a child with his or her grandparents. The grandparents are willing to serve as medical consenters, and the aunt and uncle are willing to serve as backup medical consenters. The caseworker designates:

- one grandparent as first primary medical consenter;
- the other grandparent as second primary medical consenter; and
- the aunt and the uncle as either first or second backup medical consenter.

CHANGING MEDICAL CONSENTER AND BACKUP CONSENTER

Situations may arise that cause DFPS to change a medical consenter or backup medical consenter.

Justifying a Change in Consenters

DFPS may need to change a medical consenter when the child changes placements or the primary or backup medical consenter:

- is no longer associated with the child;
- fails to act in the best interests of the child;
- fails to appropriately involve DFPS in medical decisions as outlined in Form 2085-B Designation of Medical Consenter;
- fails to appropriately inform DFPS of the child's medical condition and medical care;
- is no longer affiliated with DFPS or a residential provider (including a foster parent);
- fails to provide consent in a timely manner without a reasonable explanation;
- fails to participate in the child's healthcare appointments without a reasonable explanation; or
- fails to attend psychotropic medication appointments with the child without a reasonable explanation.

To change a medical consenter, follow policy in 11117 Changing Medical Consenter and Backup Consenter.

RESPONSIBILITIES OF MEDICAL CONSENTERS AND BACKUP MEDICAL CONSENTERS

See 11130 Responsibilities of Medical Consenters and Backup Medical Consenters.

Per 11131 Participating in Each Medical Appointment:

A person consenting to medical care for a child must participate in each appointment set for the child with the healthcare provider.

Texas Family Code §266.004(i)

Medical consenters must attend all appointments when a child may be prescribed psychotropic medications.

PREVENTIVE CARE

See 11131.1 Preventive Care.

A medical consenter is required to participate in the child's appointments with healthcare providers. This includes appointments for preventive care.

Preventive care is defined in the Medicaid Procedure Manual as the American Academy of Pediatrics Periodicity Schedule or Texas Health Steps medical checkups.

The periodicity table includes:

- well-child medical checkups;
- sensory screening (such as vision and hearing);
- developmental and behavioral assessment;
- immunizations;
- laboratory testing for screening purposes (such as blood work, urinalysis, TB testing, STD screening, and pelvic exams);
- anticipatory guidance (health education); and
- dental checkups.

THE ROLE OF THE BACKUP MEDICAL CONSENTER

Backup medical consenters may consent to medical care when a primary medical consenter is not available.

Examples of situations in which a backup can be used include when:

- the primary medical consenter is:
  - in court;
  - performing other priority duties;
  - hospitalized;
  - on vacation;
  - on sick leave;
  - unable to be reached within a reasonable time frame; or
  - unable to attend an appointment in which psychotropic medication is prescribed or monitored. (See 11131.4 Psychotropic Medication Appointments.);
- a Local Permanency caseworker or supervisor medical consenter is available, but the child is placed in a GRO where psychotropic medication appointments are provided by a team of healthcare

providers, requiring a backup medical consenter's attendance to provide medical consent for a child when the primary consenter is in an appointment with another child.

KNOWING THE CHILD'S MEDICAL HISTORY

Medical consenters need to be knowledgeable about the child's medical condition. Medical consenters and backup medical consenters may obtain from the caseworker:

- the child's known medical history, including known family medical history;
- copies of medical records in the caseworker's possession;
- information about known healthcare providers who have previously treated the child; and
- information about how to access health information through the Health Passport.

Form 2085-B Designation of Medical Consenter contains a clause allowing the medical consenter and backup medical consenter who are not CPS employees to obtain copies of medical records.

DISAGREEMENTS BETWEEN THE MEDICAL CONSENTER AND BACKUP MEDICAL CONSENTER

The medical consenter and backup medical consenter are expected to keep each other informed about the child's ongoing medical condition and treatment.

Resolving Disagreements

If the medical consenter and backup medical consenter disagree about a medical decision made by either of them, they should discuss the issue with each other and obtain additional information from the healthcare provider as needed. If they are unable to resolve their disagreement, they refer the issue up through supervisory channels.

If the medical consenter and backup medical consenter represent different agencies (such as DFPS and a residential child care provider) supervisory personnel from both agencies work together to resolve the issue.

MEDICAL CONSENTER MAILBOX RESOURCE

For questions about medical consent caseworkers or other parties may email the Medical Consenter Mailbox at: medical.consenter@dfps.state.tx.us. A person may also enter DFPSMedicalConsenter in the "to" section of the email.

The mailbox is monitored Monday-Friday 8-5. For questions requiring an answer the same day, contact the regional well-being specialist.

MEDICAL CONSENT BY MINOR YOUTH

ASSENT

Medical consenters are expected to allow children and youth to participate as much as possible in making decisions about their medical care. This process is called *assent*.

Assent involves the following elements (adapted from "Informed Consent, Parental Permission, and Assent in Pediatric Practice," Pediatrics, Volume 95, Number 2, Pages 314 – 317, February 1995.):

- helping the child or youth achieve developmentally appropriate awareness of the nature of his or her condition;
- telling the child or youth what he or she can expect with tests and treatment;
- helping to prepare the child for adulthood;
- assessing the child's or youth's understanding of the situation; and
- soliciting the child's willingness to accept the proposed care.

As children develop, they should assume more responsibility for their health care decisions. The medical consenter considers the wishes of the child in making the decision, although the medical consenter for the child makes the final decision.

Talking with children and youth about their health care and encouraging children to participate in the decision making process of informed consent helps prepare children for the time when they will begin to make health care decisions on their own. If a youth is authorized to make some but not all of his or her health care decisions, the medical consenter should continue to prepare the youth to take on the remaining health decisions when he or she either reaches age 18 or the court authorizes the youth to consent to all health care.

Caseworkers should:

- ask the child's opinion on the medical care provided and discuss safe use of medication, including youth aged 16-18 who consent to their own medical care;
- document the information in the case file; and
- include the documentation in the court reports.

See 11161 Including Medical and Behavioral Health Information in Court Reports.

Discussions About the Use of Medication

Caseworkers should discuss such issues as:

- how to talk to the healthcare provider and get the answers to any questions the child has about the medication, condition, or potential side effects;
- why it is important to follow the directions on the label;
- why prescription medications should not be shared;
- how to prevent running out of medication; and
- why it is important not to stop medications abruptly but instead consult with the healthcare provider about how to discontinue a medication safely.

INFORMING YOUTH ABOUT CERTAIN RIGHTS

11141 Educating Children and Youth About Their Medical Care

DFPS provides the youth with training on informed consent and the provision of medical care during the health section of the Life Skills training. This is offered through the Preparation for Adult Living (PAL) program after a youth turns age 16.

Educate Youth at Multiple Venues

To help ensure that youth are aware of their right to medical consent, CPS staff reviews and addresses medical consent at multiple venues where youth plan for their futures, including Circle of Support meetings and Discharge Planning and Transition Planning meetings.

Caseworkers provide information on medical consent to youths before they turn 16 years old, and on an ongoing basis.

Informing Youth of Legal Process

If a youth expresses the desire to consent to his or her medical care, the caseworker does one or both of the following:

- informs the youth that he or she should discuss this matter with his or her attorney ad litem;
- arranges for the youth to be present at his or her next court hearing to make the request to the court.

The court makes a determination as to whether the youth may consent to his or her own medical care at a permanency or placement review hearing, on its own motion or a motion filed by the child's attorney ad litem. The court may issue an order authorizing the youth to consent to some or all medical care. If the court determines the youth lacks the capacity to consent, the medical consenter previously authorized to consent continues to make medical decisions for the youth. In such cases, the court considers the child's capacity to consent at subsequent review hearings.

CONSENTING TO PSYCHOTROPIC MEDICATIONS

See:

11320 Psychotropic Medications
HHSC Rules, Texas Administrative Code, Title 1, Chapter 354
Texas Medical Board Rules, Texas Administrative Code, Title 22, Chapter 174

NON-PHARMACOLOGICAL INTERVENTIONS

Before, or along with, using psychotropic medications, medical consenters and other caregivers should consider psychosocial therapies, behavior strategies and other non-pharmacological (that is, strategies that don't involve medications) interventions for children in DFPS conservatorship.

The medical consenter or caregiver should seek assistance from the child's healthcare provider, child placing agency, CPS caseworker, and therapist to develop strategies to help the child to manage behaviors.

Trauma Informed Care

Children bring varied experiences of abuse, neglect, and separation from familiar parental figures to foster care, many of which have been traumatic for the child.

Children who are traumatized by abuse, neglect or separation may show negative behaviors that are a normal reaction to what they have experienced. Normal reactions to the child's trauma may include negative behaviors, lack of trust, or signs of emotional distress such as anxiety or depressed mood.

Support from caregivers knowledgeable about trauma-informed care can help a child heal and learn to regulate his or her feelings and behaviors. Caregivers should seek to establish a safe, structured, positive, consistent, and nurturing environment where the child can address his or her trauma and grow physically and emotionally.

While many children will respond positively to this type of environment, others may require behavior management to address the trauma they have experienced.

Behavioral Strategies and Psychosocial Therapies

Behavior management methods may range from establishing a specific routine to help the child feel safe to clinical interventions such as therapy.

The most effective behavior management methods are those tailored specifically for the child's personality, life experiences, and emotional needs. Some behavior management methods may include natural and logical consequences, but they should not be harsh, punitive or harmful to the child.

Behavioral management methods or psychosocial therapies may include providing:

- structure in the living environment;
- structured learning activities or situations;
- emotional outlets through exercise or activities;
- relaxation techniques; and
- individual, family therapy or group therapy.

Serious or Complex Symptoms

The caregiver or medical consenter should contact the child's primary care provider if the child:

- has serious symptoms or is not getting better with non-pharmacological interventions;
- is a danger to himself or herself or to others; and
- exhibits complex problems. Ask the child's primary care provider if the child may need to see a psychiatrist.

For more information about Trauma Informed Care see the National Child Traumatic Stress Network.

For information on the following, see the Mental Health Resource Guide:

Involuntary Commitment Order for Mental Health Services
Emergency Detention Order and Order for Protective Custody
Admission and Consent for Medical and Psychiatric Treatment Process

COURT ORDERS FOR HEALTHCARE RELATED TREATMENT AND SERVICES

When a court orders a healthcare service, treatment or testing for a child in DFPS conservatorship, take the following steps immediately:

1. Notify the CPS supervisor about the order. The worker and supervisor should notify the attorney representing DFPS if there is a concern that the order needs to be appealed in any way..
2. Notify the regional Well-Being Specialist and provide a copy of the written order when it is received.
3. Email a copy of the written court order to the appropriate HHSC/STAR Health established mailbox where CPS staff is to send medical and behavioral health court orders.
   a. Physical Health Court Orders can be sent to regulatorycompliance@centene.com
   b. Behavioral Health Court Orders can be sent to MedQuestions@Cenpatico.com

EXCEPTIONS: COURT-ORDERED MEDICAL SERVICES NOT COVERED BY MEDICAID OR STAR HEALTH

If the judge orders a child to undergo a specific kind of medical testing that may not be included in the regular Texas Health Steps checkup children in DFPS conservatorship receive, take the following steps:

1. Immediately inform the attorney representing DFPS (within 3 days of the court's rendering of the order) that DFPS cannot guarantee a doctor will agree to order the specific test. This allows the attorney to take immediate action in court to inform the judge or pursue legal remedies, such as asking the judge to reconsider the order.
2. If and when the court order is issued, inform the child's Medical Consenter (if it is someone other than the caseworker) about the order, and direct him or her to ask the doctor to order the test at the child's next visit with a Star Health general practitioner. Make sure the doctor knows that DFPS has been told that Medicaid does not generally cover the test. Encourage the doctor to request prior authorization and confirm medically necessary coverage before ordering the test.

Doctor Refuses to Order Medical Tests

If the doctor refuses to order the test, immediately get the doctor to provide written documentation of the doctor's refusal.

Provide the doctor's documentation to the attorney representing DFPS. Ensure that the documents are filed with the court and provided to the parties in the case.

Keep the documentation in the case record.

Doctor Orders Medical Tests

If the doctor orders the test, notify the supervisor and inform the attorney. At the next court hearing where medical care is discussed, report back to the judge the test results and any subsequent medical care the doctor prescribes.

When Medicaid Does Not Pay

When Medicaid will not pay for the procedure, DFPS will have to pay the provider. Submit the following items as soon as possible by using a Web-based Purchase Request (WPR) which is submitted through the Administrative Procurement Portal (APP). If you have any questions, send them to: DFPS Purchase Support. General information about invoicing can be found on the CPS Invoicing web page.

- Signed copy of court order directing that the child have the specific medical test
- Proof that Medicaid denied paying the claim (an email from the provider can be sufficient)
- Copy of the invoice or bill from the laboratory or provider

When Medicaid Does Pay

If Medicaid does pay for the procedure for a child, no documentation needs to be sent.

Follow this process for all new judicial orders in any region, at any kind of hearing, directing specific medical care that may not be a part of Star Health coverage.

PROCESS FOR COURT-ORDERED TREATMENT SERVICES (ORTHODONTIA)

Because Medicaid only covers orthodontia that is determined medically necessary, not orthodontia for cosmetic reasons, the state will have to pay the provider for court-ordered orthodontia if it is determined to be only cosmetic. If a court orders such treatment, submit the items required for payment (as listed below) as soon as possible by using a Web-based Purchase Request (WPR), which is submitted through the Administrative Procurement Portal (APP). If you have any questions, send them to: DFPS Purchase Support.

- Signed copy of court order directing that the child receive orthodontic treatment (braces)
- Proof that Medicaid denied paying the claim (an email from the provider, STAR Health or HHSC, can be sufficient)
- Copy of the invoice or bill from the orthodontist

If Medicaid does not pay for the child's procedure, you should also contact the Medical Services Lead in Medical Services at State Office via email at Catherine.Coffey@dfps.state.tx.us.

See:

5310 The Requirement for Staff to Elevate Certain Court Orders
11120 Court Authorizes an Individual Other Than DFPS to Be the Child's Medical Consenter
11143 Offering Ongoing Support to Youth
11200 Medical and Dental Services, under Obtaining Services

EXTRAORDINARY MEDICAL CONDITIONS

When parental rights have been terminated; or the parents are deceased, CPS staff may make the decision to donate an organ of a child when DFPS is managing conservator.

See 11730 Organ Donation / Anatomical Gifts

ORGAN DONATION / ANATOMICAL GIFTS

Reasons DFPS May Not Approve Donation

Organ donation remains controversial for many people and it does not benefit the deceased child. For this reason, DFPS may decide not to approve organ donation.

Factors to Consider Before Approval of Donation

When a request for organ donation is received, the child's caseworker, supervisor, program director, and DFPS legal staff consider whether it is appropriate to give consent. Factors that must be considered in each individual circumstance include the:

- possible need for an autopsy of the child;
- concerns of any involved extended family; and
- donor statement on the child's driver's license, if any.