

# 429 Medical Consent



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## CHAPTER 4, Adoption and Birth Parent Services

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### 429 Medical Consent

Whenever a child is placed in DSS custody, either by court order or voluntary placement, DSS has the authority to make decisions concerning ordinary medical care and emergency care. Whenever a child needs a medical procedure other than ordinary routine medical care, a review of the court order should be made to determine if DSS has been granted the authority to consent to such care. Even if such authority has been granted, priority should always be given to allowing parents to consent to any procedure if they are available to do so **(unless parental rights have been relinquished or terminated)**.

Health care providers do not need consent to provide emergency care to a patient. When the delay involved in obtaining the consent of the appropriate DSS official or parent would present a serious risk to the health of the patient, emergency care should be provided.

Authority to make decisions concerning major surgery or other high risk procedures remains with the parents (parental rights not relinquished or terminated) **unless** a court order gives DSS that authority. If a child is medically fragile or the Department is aware that the parents of the child cannot be located, the Department should obtain the court's authority to consent to major medical procedures as soon as

possible to prevent any delays in obtaining medical care for the child.

DSS has authority to make all medical decisions for the child when **parental rights have been terminated or the parents have relinquished parental rights**. For other cases, DSS must be granted authority per court order to make medical decisions; however, the agency will not exert that court ordered authority on non-TPR cases if the parents are available and are willing to give their consents.

**When DSS has authority to make medical decisions** for a child, that authority is allocated as follows:

1. The **State Director or his/her designee** must make a decision for the following types of procedures:

- a. **Major surgery:** includes, but is not limited to, any surgical procedure that requires two (2) or more days of in-patient hospitalization;
- b. **Withholding or withdrawal** of life-sustaining procedures: includes order not to resuscitate (DNR)

2. **County Directors/MTS Regional Directors/Area Adoption Administrators** must make the decision for other procedures, as follows:

- a. **Minor surgery:** includes, but is not limited to, insertion of ear tubes, circumcision, and insertion of shunts and related tubing. Generally, any outpatient surgical procedure will fall into this category;
- b. **Invasive diagnostic procedures:** includes, but is not limited to, upper GI, colonoscopy, barium enema;
- c. Use of **general anesthesia**.

3. A **designee** (DSS employee) of the County Director, MTS Regional Director or Area Adoption Administrator may make the decision for other minor medical procedures. Examples include, but are not limited to:

- a. **Noninvasive diagnostic procedures**, such as x-ray;
- b. Procedures involving only a **negligible bodily invasion**, such as injection or withdrawal of blood;
- c. **Maintenance** of shunts or tubes.

4. Staffings as needed regarding consent for medical procedures may include but not be limited to: County Director, MTS Director or MTS Regional Director, Area Adoption Administrator and/or designee; Guardian Ad Litem; parent(s), foster parent(s); supervisor and worker. Following the staffing, the county attorney (as necessary) may be consulted to resolve any legal questions or concerns.

## **Referenced Documents**

## **Revision Comments**