
Policy Title:	Revised Consent to Medical, Dental, Psychological Care and Treatment, and Educational Consent Guidelines
Applies To:	DHS Social Work Services Managers (SWSMs) CUA Case Managers (CMs)
Replaces:	Consent to Medical, Dental, Psychological Care and Treatment, and Educational Consent Guidelines, issued May 2018

OVERVIEW:

This document provides an overview of the areas that DHS Social Work Services Managers (SWSMs) or CUA Case Managers (CMs) can consent to, on behalf of a child or youth who is in the legal custody of DHS. Gender-transition related care has been included in this revised policy.

POLICY

Policy Statement

DHS SWSMs and CUA CMs are able to consent to the “routine” medical and dental care and treatment, standard, non-educational psychological and psychiatric evaluations, and standard outpatient behavioral health services of children and youth committed to the care of DHS. DHS SWSMs and CUA CMs are not authorized to consent for non-routine care, such as invasive evaluations or treatment, or nonstandard outpatient behavioral health services.

Kinship and resource parents are not authorized to consent to any treatment but may take children and youth to appointments.

Unless the parental rights are terminated, for those children and youth who are in the legal custody of DHS (i.e. committed to DHS via a court order), parents and legal guardians must be notified of all treatment where parental or guardian consent is required and an attempt must be made to obtain a parent or legal guardian’s consent.

When a child or youth is in the parent’s or legal guardian’s custody, only the parent or legal guardian can consent. The Law Department must be consulted if there are any questions about who can provide consent. If the case has been referred to a CUA, the CUA CM is responsible for any consultations with the Law Department as described below.

Medical – Routine

DHS SWSMs and CUA CMs are able to consent to the “routine” care and treatment of children and youth committed to the care of DHS. Kinship and resource parents can take children and youth to appointments for routine care.

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For questions about this policy or its related documents, please contact Policy & Planning at (215) 683-4108 or DHSPolicy@phila.gov.

If there are any questions about what constitutes routine treatment, DHS SWSMs or CUA CMs contact the Law Department.

Medical – Non-Routine

DHS SWSMs and CUA CMs are not authorized to consent for non-routine care, such as invasive medical evaluations or treatment.

Consent to invasive evaluation or treatment must be obtained from the parent or by Court Order. In those situations where the parent or legal guardian's whereabouts are unknown or there is a lack of capacity by the parents or legal guardians to consent, or either parent or legal guardian refuses to consent, a Court Order is required for any treatment considered to be medically necessary.¹ The Law Department must be consulted in these situations.

When a parent or legal guardian is unavailable to consent, DHS or the CUA must contact the DHS Court Unit Supervisor so that a Motion to Treat can be generated. A Motion to Treat is a legal mechanism where the Court is asked to give DHS permission to sign for a specific non-routine medical treatment or intervention.

When the parent or legal guardian is available but will not consent, or disagrees with the proposed treatment, DHS or the CUA must contact the Law Department so that the case can be relisted for a contested hearing where the judge will decide whether DHS can consent to the medical treatment.

When the Court has ordered that DHS or its designee may sign for non-routine care, for CUAs the consent is to be signed by the CUA's assigned Practice Coach or Senior Learning Specialist.

Emergency Medical Treatment

While kinship and resource parents and DHS SWSMs and CUA CMs may take children and youth to the hospital or call for emergency services (i.e. 911), they are not authorized to consent for emergency treatment. However, under the Minor's Consent to Treatment Act at 35 Pa.C.S. § 10104:

¹ The health, safety and welfare of a child involved in juvenile court proceedings is one of the foremost considerations contemplated by the Juvenile Act. See 42 Pa.C.S.A. § 6301(b)(1.1) (stating one of the purpose of the Juvenile Act is "[t]o provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter"). To that end, the Juvenile Act gives the legal custodian of a child "the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child." 42 Pa.C.S.A. § 6357. It is left to the juvenile court to carve out the precise conditions and limitations of the grant of legal custody, as well as to define the remaining rights and duties of the child's parent or guardian. *Id.* If the child's parent, guardian, or custodian will not consent to the child's receipt of medical treatment, the juvenile court "may order the child to be examined at a suitable place by a physician or psychologist and may also order medical or surgical treatment of a child who is suffering from a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment[.]" 42 Pa.C.S.A. § 6339(b). The juvenile court may enter this order "even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of his refusal to consent to the treatment." In re J.A., 2015 PA Super 3, 107 A.3d 799, 814-15 (2015)

Medical, dental and health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the physician's judgment, an attempt to secure consent could result in delay of treatment which would increase the risk to the minor's life or health.

Consent to emergency invasive evaluation or treatment should be obtained from the parent or legal guardian whenever possible.

Dental – Routine Evaluation and Treatment

DHS SWSMs and CUA CMs may consent to the routine dental evaluation and treatment for children and youth committed to the care of DHS. Kinship and resource parents can take children and youth to appointments for routine dental care.

Dental – Non-Routine Evaluation and Treatment

DHS SWSMs and CUA CMs may not consent to non-routine and invasive dental evaluations and treatment.

Consent to non-routine and invasive dental evaluations or treatment must be obtained from the parent or legal guardian whenever possible. When the parent or guardian's consent is not possible to obtain, the evaluation and treatment must be authorized by Court Order.

When a parent or legal guardian is unavailable to consent, DHS or the CUA must contact the DHS Court Unit Supervisor so that a Motion to Treat can be generated. A Motion to Treat is a legal mechanism where the Court is asked to give DHS permission to sign for a specific non-routine dental treatment or intervention.

Where the parent or legal guardian is available but will not consent or disagrees with the proposed treatment, DHS or the CUA must contact the Law Department so that the case can be relisted for a contested hearing where the judge will decide whether DHS can consent to the dental treatment.

Psychological and Psychiatric Evaluations and Interventions

DHS SWSMs and CUA CMs are authorized to consent to:

- All standard and non-educational psychological and psychiatric evaluations for children and youth committed to the care of DHS. Kinship and resource parents can take children and youth for these evaluations.

Mental Health Therapy

DHS SWSMs and CUA CMs are authorized to consent to all standard outpatient therapy for children and youth committed to the care of DHS. Youth 14 and older also can consent to their own mental health treatment. Kinship and resource parents can take children and youth to these appointments.

DHS Social Work Services Managers and the CUA Case Managers **cannot** consent to nonstandard outpatient behavioral health services and they require consent of the parent or legal guardian or a Court Order.

Youth 14 and older can generally consent to their own mental health treatment. If a minor refuses or there are issues, the DHS SWSM or CUA CM must consult with the Law Department.

Medication

DHS SWSMs and CUA CMs are not authorized to consent to prescription medication for children and youth committed to DHS. Efforts must be made to contact the parent or legal guardian.

Where a parent or legal guardian is unavailable to consent, DHS or the CUA must contact the DHS Court Unit Supervisor so that a Motion to Treat can be generated. A Motion to Treat is a legal mechanism where the Court is asked to give DHS permission to sign for a specific non-routine medical treatment or intervention.

Where the parent or legal guardian is available but will not consent or disagrees with the proposed treatment, DHS or the CUA must contact the Law Department so that the case can be relisted for a contested hearing where the judge will decide whether DHS can consent to the medical treatment.

In-Patient Psychological and Psychiatric Treatment

DHS SWSMs and CUA CMs are not authorized to consent to in-patient mental health treatment for children and youth committed to the care of DHS.

DHS SWSMs and CUA CMs are authorized to take a child or youth or facilitate intervention by crisis response providers when a child or youth committed to the care of DHS is in apparent psychological distress (i.e. appear to be a threat to themselves or others).

DHS SWSMs and CUA CMs must obtain the consent of the parent or legal guardian for in-patient mental health treatment. Youth 14 and older may also consent to their own treatment. If the minor refuses treatment or there are issues, the DHS SWSM or CUA CM must consult with Law Department for further direction.

If the whereabouts of the parents or legal guardians are unknown to DHS, or if they are unwilling to sign a consent, medically necessary involuntary admission must be obtained by following the requirements of the Mental Health Procedures Act. NOTE: hospitals have the responsibility to file the necessary petition for involuntary commitment. DHS cannot file such petitions and cannot sign any documents for admission to inpatient psychological treatment (unless parental rights are terminated).

Evaluation and Treatment for Communicable Diseases

A minor of any age can consent to testing and treatment for any reportable sexually transmitted disease. These include, but are not limited to HIV and AIDS, chlamydia, gonorrhea, and syphilis.

Reproductive Health and Treatment

Minors can obtain contraception (birth control), including the “morning-after pill” without parental consent or involvement, regardless of the minor’s age, as long as the minor has the capacity to consent.

Termination of Pregnancy

Pennsylvania law requires that youth under the age of 18 must have parental consent to terminate a pregnancy. If the youth cannot or is unwilling to get parental consent, a Court Order known as a “Judicial Bypass” must be obtained for her to consent to the procedure without parental notification. In this proceeding, the Court must determine if the youth is mature and capable of making an informed decision about terminating her pregnancy without parental involvement. To obtain a Judicial Bypass, the DHS or CUA Worker must contact the Health Management Unit (HMU), which will provide an appropriate resource for the youth to contact to bring the matter into Court. If the pregnancy is terminated, the youth must have a post-operative appointment and counseling, coordinated by the DHS or CUA Worker, who must notify the HMU of when they are scheduled.

Gender Transition-Related Care

DHS SWSMs and CUA CMs are not authorized to consent to initiating gender transition-related care for children and youth committed to DHS. Efforts must be made to contact the parent or legal guardian. If the youth is 18 or older, has graduated from high school, been married, been pregnant, or "emancipated" by court order, the youth can sign.

When a parent or legal guardian is unavailable to consent, DHS or the CUA must contact the DHS Court Unit Supervisor so that a Motion to Treat can be generated. A Motion to Treat is a legal mechanism where the Court is asked to give DHS permission to sign for a specific non-routine medical treatment or intervention.

When the parent or legal guardian is available but will not consent or disagrees with the proposed treatment, DHS or the CUA must contact the Law Department so that the case can be relisted for a contested hearing where the judge will decide whether DHS can consent to the medical treatment.

Parental Rights Terminated

While the DHS Permanency Worker, in general, may authorize non-routine treatment when the rights of both parents have been terminated, all non-routine treatment should be discussed with the Law Department prior to authorizing the treatment. It is DHS policy to get a Court Order in cases involving experimental or unusual or extraordinary measures (e.g. brain surgery). In addition, there is a specific DHS palliative policy that must be followed when planning for children and youth in DHS custody who have extraordinary or terminal conditions. The Law Department must be contacted if there are questions about whether a specific treatment or procedure can be consented to.

DHS must obtain a Court Order regarding palliative care decisions. When this situation arises, the Law Department must be consulted regarding counsel notification and Court.

Education

DHS SWSMs and CUA CMs are not authorized to consent to the evaluation for, and provision of special education services.

Kinship and resource parents are considered the “parent” for purposes of consenting to special education services, if the parent’s educational rights have been limited by the Court or if a parent or legal guardian is not attempting to act.

In the absence of a parent, legal guardian, kinship, or resource parent (for instance, the child or youth is in a congregated care setting), an educational surrogate must be appointed to address the educational needs of the child or youth.²

² The Juvenile Court Procedural Rules at 1147 require: A. *Generally*. At any proceeding or upon motion, the court shall appoint an educational decision maker for the child if it determines that: 1) the child has no guardian; or 2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the child's best interest to limit the guardian's right to make decisions regarding the child's education.

Policy and Procedure Guide

Procedure Title: Revised Consent to Medical, Dental, Psychological Care and Treatment, and Educational Consent Guidelines

Applies To: DHS Social Work Services Managers (SWSMs)
CUA Case Managers (CMs)

PROCEDURE OVERVIEW

This procedure provides examples of the medical, dental, and psychological treatment and care for children and youth in DHS custody to which DHS or CUA staff can consent and cannot consent.

PROCEDURE and PRACTICE CONSIDERATIONS

ROLES AND RESPONSIBILITIES (*what happens, who does it, what are the time frames, how is it documented*)

Medical – Routine

Routine care includes:

- Well child appointments.
- Vaccinations (except where it is known that a parent or legal guardian objects on the basis of religion).
- COVID-19 testing (Viral and Antibody).
- Treatment for ordinary illnesses – non-invasive.
- Primary care – evaluation and assessment – non-invasive.

Medical – Non-Routine

Non-routine care includes:

- Any invasive treatment or examination that requires incision, suture, sedation or anesthesia, injection (other than routine vaccinations), or prescription medication (including psychotropic medications), with the exception of antibiotics used to treat ordinary illnesses where there are no known allergies.

Dental – Routine Evaluation and Treatment

Routine dental care and evaluation includes:

- Dental x-rays.
- Cleanings.

Dental – Non-Routine Evaluation and Treatment

Non-routine and invasive dental evaluations and treatment include:

- Any procedure that requires an injection, incision, suture, and braces or other orthodontic work.

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Psychological and Psychiatric Evaluations and Interventions

Standard and non-educational psychological and psychiatric evaluations for children and youth committed to the care of DHS include:

- Crisis Assessment.
- Outpatient Assessment Access Centers.
- Comprehensive Biopsychosocial Evaluation/Re-evaluation (CBE/CBR).
- Extended Assessment Service (EAS).
- Functional Behavior Assessment.
- Children's Mobile Crisis Teams (CMCT).
- Crisis Mobile Intervention Service (CMIS).

Mental Health Therapy

Examples of standard outpatient therapy for children and youth committed to the care of DHS include:

- Outpatient therapy including:
 - Talk therapy.
 - Music therapy.
 - Dance therapy.
 - Art therapy.
 - Trauma therapy.
- Community treatment supports including:
 - Blended case management (BCM).
 - Enhanced case management (ECM).
 - Continuity of care team (COC).
 - Hi-fidelity Wraparound/Joint Planning Team.
- Community Based Treatment including:
 - Intensive Behavioral Health Services (IBHS).
 - Behavioral Health Rehabilitation Services (BHR, CTSS).
 - Early Childhood Treatment Program (ECTP).
 - Children's Interim Response Team.
 - Clinical Transition and Stabilization Services (CTSS).
 - School Therapeutic Services (STS).
 - Therapeutic Emotional Support Classroom (TESC).
 - Summer Therapeutic Activities Program (STAP).
 - Afterschool Programs (ASP).
 - Family Based Services (FBS).
 - Philadelphia Intensive In-Home Child and Adolescent Psychiatric Services (PHIICAPS).
 - Functional Family Therapy (FFT).
 - Multi-Systemic Therapy for Problem Sexual Behaviors (MST-PSB).

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The following are **not** considered standard outpatient therapy and they require consent of the parent or legal guardian or a Court Order:

- Residential Treatment Facility (RTF).
- Medication management.
- Community Residential Rehabilitation Host Home (CRR-HH).
- Acute Inpatient.

In-Patient Psychological and Psychiatric Treatment

In-patient mental health treatment and services for children and youth committed to the care of DHS, for which DHS SWSMs or CUA CMS cannot consent includes but is not limited to:

- Long Term Partial.
- Short and Long Term Residential.
- Community Residential Rehabilitation-Host Home.
- Residential Treatment Facility.
- Acute Partial Hospital.
- Inpatient Crisis Stabilization Units.
- Acute Inpatient Hospital.

Evaluation and Treatment for Communicable Diseases

A minor can consent to testing and treatment for any reportable sexually transmitted diseases including, but not limited to:

- HIV and AIDS.
- Chlamydia.
- Gonorrhea.
- Syphilis.

Reproductive Health and Treatment

Minors can obtain contraception (birth control) without parental consent or involvement, regardless of the minor's age, as long as the minor has the capacity to consent.

Termination of Pregnancy

The following are **not** considered contraception (birth control) and they require consent of the parent or legal guardian or a Court Order:

- RU-486, Mifeprex.
- Mifepristone combined with Misoprostol.
- Methotrexate.

Palliative Care

Palliative care decisions include:

- Hospice care.
- Limiting or forgoing life sustaining medical treatment.
- Implementing a Do Not Resuscitate ("DNR") order.

DOCUMENTATION REQUIREMENTS

- Any authorized consents to routine care and treatment signed by DHS SWSMs, CUA CMs, or other DHS staff, such as Practice Coaches or Senior Learning Specialists, must be documented in a Structured Progress Note and by uploading a copy of the document to the electronic case record.
- All discussions with parents or legal guardians, chain of command, the Law Department, DHS Nurses and DHS Psychologists must be documented in a Structured Progress Note in the electronic case record, and any documents uploaded to the electronic case record.
- All motions filed and court orders issued with respect to care and treatment of a child or youth committed to DHS must be uploaded to the electronic case record.

RELATED DOCUMENTS AND RESOURCES:

Attachments:

Forms: Medical and Surgical Consent Form (85-23)
Related Policies or Procedures: Guide for DHS Workers and CUA Case Managers on Mandatory Consultation issued February 2017.
Other Resources:

POLICY AND PROCEDURE REVIEW AND APPROVAL

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APPROVAL SIGNATURE

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