TN Department of Children's Services

POLICY

20.24 Informed Consent	
Application: All Department of Children's Services Employees and Contract Agency Staff	
Authority: TCA 29-26-118, TCA 37-5-105(3), 37-5-106, TCA 37-1-140, TCA 37-1-128, TCA 33-8202, TCA 37-10-301 through 307, TCA 63-6-220, TCA 63-6-222-223, TCA 63-6-229, TCA 68-10-104(c), TCA 68-11-1802, TCA 68-34-107, Cardwell v. Bechtol (724 S.W. 2d 739), and Tennessee Attorney General Opinion No. 04-127; Mature Minor Doctrine Clarification Act	**Standards: COA:** PA-CR 1.01; PA-CR 1.02; PA-CR 1.04; PA-PRG 4.02; PA-CFS 11.05; PA-CFS 14.04; PA-JJCM 4.02; PA-JJCM 4.03 **PREA**: 115.321
Commissioner:	**Date:**
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Glossary:

- Contract Agency Case Worker:
  - A staff person of a DCS contract agency providing services for DCS state custody children and youth. This person works directly with the children and youth in custody.
- Case Aide:
  - An individual who was solely hired to assist FSW/JSW's in their routine job performances.
- Parent(s):
  - Refers to biological parent, adoptive parent or legal guardian.
- Perioperative:
  - Around the time of surgery, usually lasting from the time the patient goes into the hospital or doctor's office for surgery until the time the patient goes home.

Policy Statement:

DCS shall facilitate the informed consent process for children in custody to receive appropriate health services by providing or delegating consent as appropriate. In the event of any apparent or real conflict as to consent authority, this policy controls over any other DCS policy.

Purpose:

Informed consent is based on the fundamental principle that every person has the right to control his/her own bodily integrity. The individual has a right to receive sufficient

information to enable the individual to make an informed decision about whether to consent to or refuse the tests or treatments.

Procedures:

A. Introduction to Informed Consent

1. Every individual has the right to receive information regarding prescribed tests or treatments, including risks and benefits of taking the tests or treatments and risks/benefits of not taking the tests or treatments.
2. The healthcare provider should provide a verbal and/or written explanation about the prescribed treatment or test, explained in a way the patient fully understands, which generally includes the following:
   - **a)** Diagnosis for which the treatment/medication is prescribed;
   - **b)** Nature of the medication, treatment, test, or procedure;
   - **c)** Name of the medication, including both generic and brand names;
   - **d)** Dosage and frequency of medication;
   - **e)** Expected benefits;
   - **f)** Possible risks and side effects;
   - **g)** Availability of alternatives; and
   - **h)** Prognosis without proposed intervention.
3. Informed consent is the consent to treatment given after the individual, legal custodian, and/or legal guardian has received sufficient information about the risks and benefits of taking and not taking a prescribed or recommended treatment
4. In deciding whether or not to consent to treatment, youth, parents, caregivers, or DCS staff/representatives should ask questions as appropriate or needed, and may seek assistance from the DCS regional nurse or psychologist. DCS staff/representatives should seek guidance from supervisory staff or local DCS attorney if they have further questions.
5. Depending upon the setting and the healthcare provider, the individual or their guardian may be asked to sign a form documenting their consent to or refusal of treatment. Should the consent be provided verbally, DCS requires a written copy of the consent documentation from the healthcare provider.

B. Parental Notifications

1. The child's DCS Caregiver (FSW/JSW, foster parent, or contract agency staff) should participate in healthcare appointments. Parents are encouraged to attend healthcare appointments, as long as their parental rights have not been terminated

or unless there are special circumstances in which it may not be in the best interest of the child.

2. At the Initial Child and Family Team Meeting, (see the DCS ***Child and Family Team Meeting Guide***) parents are informed that as legal custodian, DCS has the authority to consent to or delegate the authority to consent to ordinary or routine medical care for the child.
3. Upon a child's entry into custody, the parent(s) are asked to sign DCS form ***CS-0206, Authorization for Routine Health Services for Minors***. This form verifies that DCS is the legal custodial of the named child and as such is authorized to consent or to delegate its consent authority to ordinary and /or necessary medical care. It also allows the parent to permit such care. If a parent refuses to sign DCS form ***CS-0206***, DCS, due to its rights and responsibilities as legal custodian, is still authorized to consent to ordinary and/or necessary medical care and/or treatment.
4. After a child receives routine health care or any other care where the parent did not provide consent, the child's parent is informed as soon as possible about the healthcare given and the need for any follow-up care. Notification of parents is handled as follows:
   a) DCS Foster Home: If the foster parent signs the consent for healthcare, the foster parent will notify the DCS Family Service Worker (FSW)/Juvenile Service Worker (JSW) as soon as possible. The FSW/JSW then notifies the child's parent(s).
   b) Contract Agency, DCS Youth Development Center: If the contract agency caseworker or contract agency foster parent or DCS YDC staff provides consent for healthcare, they will contact the child's parent(s) and the FSW/JSW.
5. Initial Child and Family Team meetings and Permanency Plan staffings include a discussion of the possibility of mental health evaluations and psychotropic medications. FSW/JSW's advise parents that their attendance at appointments and involvement in their child's care is encouraged. The statute regarding youth 16 years and older making their own consent decisions about mental healthcare is reviewed at these meetings, if applicable (refer to Section H "Consent for Psychotropic Medication").

C. Age Requirements for Minor's Consent or Refusal

1. Consent by a legal custodian is generally required for the healthcare treatment of a minor child. However, there are instances according to Tennessee law when the minor's decision can be accepted if the healthcare provider chooses to do so.
2. Certain types of healthcare and treatment do not require specific age for a provider to treat minors without consent or knowledge of parent or guardian. These include:
   a) Treatment of juvenile drug abusers

b) Prenatal care
c) Contraceptive supplies
d) Examination, diagnosis, and treatment if delay of care for consent would result in serious threat to the life of the minor or serious worsening of the medical condition

3. Beginning at age 16, minors in Tennessee with serious emotional disturbance (SED) or mental illness have the same rights as adults to make decisions about mental health treatment.
4. See the ***"Health Care Decision Making Authority Quick Guide"*** for a condensed reference.

D. Consent for Routine Medical Care

1. When children are in the legal custody of DCS, DCS has the authority to consent to routine medical care or to delegate the authority for consent for routine medical care to individuals responsible for the day-to-day care of the child. DCS, as legal custodian, entrusts foster parents and other care providers with authority and responsibility for the daily upbringing and care of children in their care consistent with the child's individualized circumstances and in consultation with the child's medical provider, including routine authority for such matters as well-care treatment and assessments of vision and hearing.

Note: Examples of routine health services are EPSDT/well-child checkups, routine dental procedures including extractions, blood draws and samples, treatment of communicable disease(s), care for common childhood illnesses, routine suturing of minor lacerations, x-rays, and other medical procedures not listed generally as governed by implied consent guidelines in the community setting.

2. The FSW/JSW, the FSW/JSW's supervisor(s) or Regional Administrator/JJ Statewide Director's designee(s), the foster parent, the contract agency caseworker, the designated Youth Development Center staff (Superintendent or designee), the DCS Regional Nurse, the Deputy Commissioner of Child Health, and other care providers are authorized by DCS to give consent for routine medical care.

Note: Case aides and Transportation Officers may not provide consent for any type of healthcare for children in custody.

3. Refer to Section B "Parental Notifications" for parent notification process after a child has received routine healthcare.
4. If a child refuses to give consent for routine medical care, refer to Section L "Refusal."

E. Consent for Vaccinations

1. Tennessee law states that DCS or its agents shall not provide, request, or facilitate the vaccination of a minor child in DCS custody except:
   - **a)** When a court order specifically authorizes vaccination;
   - **b)** When a parent or legal guardian has provided prior written informed consent; OR
   - **c)** When the parental rights of each parent or legal guardian to the child have been terminated and all opportunities for appeal exhausted.
2. When the need for vaccinations arise:
   - **a)** If parental rights are still intact and there is no court order authorizing vaccinations, the FSW/JSW shall arrange for the parent or guardian to provide written informed consent for the vaccination(s). If the parent refuses to give consent, the FSW/JSW documents the refusal in TFACTS.
   - **b)** If there is a court order authorizing the vaccination, the FSW/JSW shall ensure that the individual attending the healthcare appointment with the child has appropriate documentation verifying that there is an order authorizing the vaccination.
   - **c)** If all parental rights are terminated and all opportunities for appeal exhausted, then consent may be given or delegated as set out in Section D, "Consent for Routine Medical Care."

F. Consent for Emergency Healthcare Treatment

1. Tennessee law permits a doctor to perform emergency medical or surgical treatment on a minor, despite the absence of parental consent or court order, where such physician has a good faith belief that delay in rendering emergency care would, to a reasonable degree of medical certainty, result in a serious threat to the life of the minor or a serious worsening of such minor's medical condition and that such emergency treatment is necessary to save the minor's life or prevent further deterioration of the minor's condition.
2. If the physician will not treat the child without consent, the FSW/JSW, the FSW/JSW's supervisor(s) or Regional Administrator/JJ Statewide Director's designee(s), the foster parent, the contract agency caseworker, the designated Youth Development Center staff (Superintendent or designee), the DCS Regional Nurse, the Deputy Commissioner of Child Health, and other care providers may all give consent at the time emergency healthcare is needed.
3. Refer to Section B "Parental Notifications" for parent notification process.

G. Consent for Surgical Procedures and/or Anesthesia

1. When the need for surgical procedures and/or anesthesia arises, the parent(s) is engaged in all perioperative decisions and appointments. The parent(s) makes the decision of whether to provide informed consent for the surgery and/or anesthesia unless parental rights have been terminated.
2. The FSW/JSW, the contract agency caseworker or the designated Youth Development Center staff arrange for the parent(s) to attend all perioperative appointments with the treating healthcare provider. The parent(s) makes the decision regarding the surgical procedure and/or anesthesia.
3. If the parent(s) refuses to give consent for the surgical procedure and/or anesthesia, refer to Section L "Refusal."
4. If the child's parent(s) is not available to participate in perioperative appointments and determine consent, the DCS Regional Nurse is notified of all perioperative appointments. Prior to giving consent, the DCS Regional Nurse should consult the DCS Director of Nursing, the Deputy Commissioner of Child Health or designee, and DCS Legal if there are concerns or questions as to whether the surgical procedure and/or anesthesia are beyond DCS' authority to consent, which would require a court order. Refer to Section N-4 and N-5 of this policy for further guidance.
5. If someone other than the parent provides consent, refer to Section B "Parental Notifications" for parent notification process (rule applies if child is under 15 years old).

H. Consent for Routine Mental Health Treatment

1. If the child is younger than 16 years of age, the FSW/JSW, FSW/JSW's supervisor(s) or Regional Administrator/JJ Statewide Director's designee(s), foster parent, contract agency caseworker, designated Youth Development Center staff (Superintendent or designee), the DCS Regional Nurse, the Deputy Commissioner of Child Health, and other care providers are authorized by DCS to sign consent for outpatient and inpatient mental health treatment (excluding psychotropic medication–refer to Section I "Consent for Psychotropic Medication").
2. Refer to Section B "Parental Notifications" for parent notification process.
3. **Older children have special rights with regard to mental health services**. Youths 16 years and older may provide their own consent for mental health treatment. When these youths give consent, additional consent from the parent, legal guardian or legal custodian is not needed. However, some mental health providers, at their discretion, may choose not to treat 16-year-old youths without parental involvement. In these cases, if the 16-year-old youth does not want his/her parent(s) involved, then another mental health treatment provider should be sought.

4. If the parent(s) or child refuses to give consent for routine mental healthcare, refer to Section L "Refusal."

I. Consent for Psychotropic Medication

1. When the need for psychotropic medication arises, the parent(s) is engaged in all medication decisions and appointments for the child, unless parental rights have been terminated or the youth is 16 years of age or older.
2. **Under Age 16 Years**: For children less than 16 years of age, the parent(s) are notified of psychiatric appointments by direct contact, phone, or mail. Parents are requested to participate in person or be available by phone for consultation at the time of the appointment whenever possible. The contact with the parent(s) is made by one of the following staff: the FSW/JSW, the FSW/JSW's supervisor(s) or Regional Administrator/JJ Statewide Director's Designee (s), contract agency caseworker, or designated Youth Development Center staff. The staff person coordinating parental involvement will relay this information to the prescribing provider.
3. **Age 16 Years or Older**: Youth 16 years of age or older have the right to determine parental involvement in psychiatric appointments and medication decisions. The following staff should discuss this option with the youth: the FSW/JSW, the FSW/JSW's supervisor(s) or Regional Administrator/JJ Statewide Director's Designee (s), contract agency caseworker, or designated Youth Development Center staff. The staff person discussing this with the youth will relay the youth's decision regarding parental involvement to the prescribing provider.
4. When a psychotropic medication is prescribed, the prescribing healthcare provider should discuss information about the medication (refer to Section A "Introduction to Informed Consent"). If the parent(s) or youth age 16 years or older agrees with the prescribed medication, DCS form, ***CS-0627, Informed Consent for Psychotropic Medication***, or equivalent form, is completed and signed. The parent will provide verbal consent if he/she is not physically present for the appointment. Refer to Section K "Verbal Consent" for information on documentation of verbal consent. If the parent is not present for the appointment or available by phone, the consent document is forwarded to the DCS Regional Nurse for informed consent responsibility. The prescribing healthcare provider is provided with contact information for the DCS Regional Nurse should he/she wish to discuss the recommendation verbally. The DCS Regional Nurse reviews the medication recommendations. Should the DCS Regional Nurse consent to treatment, he/she signs and faxes the consent to the appropriate party so the child can begin the medication.
5. If the child is in an acute or sub-acute psychiatric setting and the parent cannot be located within 4 hours or less if late in the business day, or the child requires urgent

consent outside of regular DCS business hours including weekends and holidays, the provider can contact the DCS Regional Nurse.

6. Once the DCS Regional Nurse has signed the consent, he/she notifies the FSW/JSW, who then notifies the parent (if appropriate) of the medication and encourages parent participation in future appointments. In the case of a youth age 16 years or older, the parent is notified of the medication only with authorization of the youth.
7. If the parent has been unable to participate in the mental health appointment but has been notified about healthcare decisions and has questions, the DCS Regional Nurse will answer questions to the best of their ability. The DCS Regional Nurse works with staff to facilitate communication between the parent and the prescribing provider and encourages participation of the parent in future appointments.
8. If the parent or youth age 16 years or older refuses to consent to the psychotropic medication recommendations, refer to section L "Refusal".
9. Informed consent is given for a specific child to take a specific psychotropic medication(s). If a medication is stopped for more than 14 days, a new consent is required. The DCS Regional Nurse and the parent, if appropriate (refer to Section I-6 above), are notified of all changes with medication (e.g., dosage changes, discontinuations) regardless if a new consent is required.
10. DCS form ***CS-0627, Informed Consent for Psychotropic Medication***, or equivalent form, travels with the child. If a child's placement is changed, the consent forms for current medications accompanies the child to the new care provider. However, the new prescribing provider may also request consent (verbally or in writing) for his or her own proper informed consent documentation.
11. Some medications, such as anti-seizure drugs, can be used for medical or psychiatric conditions. When prescribed for a medical condition, these medications do not require written informed consent. Only medications prescribed for a mental health diagnosis or used as a psychotropic medication require this informed consent.
12. If a child/youth enters custody on psychotropic medication, the parent or youth age 16 years and older provides consent to continue the medication by signing DCS form ***CS-0627, Informed Consent for Psychotropic Medication***. If a parent refuses to consent to continuation of the medication, the DCS Regional Nurse provides consent until the child is further evaluated.
13. If a child remains on the same medication for a year, renewal consent is obtained.

J. Emergency Administration of Psychotropic Medication

If an emergency administration of a psychotropic medication is deemed necessary for the protection of a child in state custody, the medication is administered per physician order. Consent is not needed prior to the emergency administration, but the FSW/JSW,

parent, and DCS Regional Nurse are to be notified at the earliest possible opportunity (within 24 hours). Refer to DCS Policy ***20.18, Psychotropic Medication***.

K. Verbal consent

When it is not possible to obtain written documentation of the informed consent, the healthcare provider documents on the consent form that the consent was given verbally and note by whom (e.g., parent, DCS Regional Nurse). Ideally, a second person should witness the verbal consent, whenever possible, and document the witness of the verbal consent on the consent form. A copy of the verbal consent documentation is obtained from the healthcare provider and kept in the child's DCS case file.

L. Refusal

1. Any person refusing treatment is appropriately informed regarding the impact of such refusal.
2. Any youth refusing medically necessary healthcare services should sign DCS form ***CS-0093, Release from Medical Responsibility***. If the youth refuses to sign, the FSW/JSW, contract agency caseworker or designated Youth Development Center staff completes the form and notes the youth refused to sign.
3. In cases of refusal, DCS consults with the prescribing healthcare provider to determine if:
   - **a)** The treatment or medication is medically necessary;
   - **b)** If the child may be harmed if he/she does not receive the treatment or medication; and
   - **c)** If there are any less invasive alternative treatments or medications available.
4. If after consulting with the provider, DCS determines that the treatment is necessary to protect the child from harm and having the treatment is in the best interest of the child, then the FSW/JSW consults with the regional DCS attorney regarding the need for judicial intervention.

M. Documentation

1. Efforts to engage the child's parent in the healthcare of the child are documented in **TFACTS** by the FSW/JSW. Documentation includes the parent's actual engagement or reasons why the parents could not be engaged. If contract agency staff coordinates parental engagement, the contract agency notifies the FSW/JSW, who then documents the coordination in **TFACTS**.

2. Efforts to notify the child's parent about the healthcare given and the need for any follow-up care is documented in **TFACTS** by the FSW/JSW. If the parent cannot be located, the FSW/JSW documents the reasonable efforts taken to notify the parent.
3. Youth 16 years of age or older have the right to determine parental involvement in psychiatric appointments and medication decisions. The staff person discussing this with the youth relays the youth's decision regarding parental involvement to the prescribing provider and documents the decision in **TFACTS.** If contract agency staff holds this conversation with the youth, the contract agency notifies the FSW/JSW, who then documents the youth's decision regarding parental involvement in **TFACTS**.
4. Any case of healthcare service refusal is documented in **TFACTS**. Documentation includes information regarding steps taken to inform person refusing about the impact of the refusal, consultation with the treating healthcare provider, and consultation with the regional DCS attorney (if applicable). Additionally, youth refusing healthcare services complete DCS form ***CS-0093, Release from Medical Responsibility.***

N. Categorical Exclusions and Extraordinary Medical Care

1. Consent for certain medical procedures is never given by DCS, due to the limitation of DCS' consenting authority to ordinary medical care and the existence of a specific statutory scheme that governs consent for certain procedures.
2. As a general rule, DCS does not provide consent for medical treatment or procedures that are not medically necessary. However, those decisions are made on a case-by-case basis considering what is in the best interest of the child.
3. DCS does not provide consent for the following procedures:
   a) Removal of Life Support (refer to DCS Policy ***20.57, End of Life Decisions for Children in Custody/Guardianship)***
   b) Do Not Resuscitate Orders (refer to DCS policy ***20.57, End of Life Decisions for Children in Custody/Guardianship)***
   c) Organ Donation (refer to ***Protocol for Death of Child/Youth in Department of Children's Services Custody/Guardianship***)
   d) Medical Research and Clinical Trials
   e) Abortion
4. In addition to the above categorical exclusions, determination of whether other medical procedures are considered extraordinary medical care and thus, outside DCS authority to consent, are made on a case-by-case basis.
5. If the prescribing or consulting healthcare provider deems a procedure or medical treatment to be extraordinary medical care, DCS requests a hearing by the juvenile

court when the child's parent(s) is unavailable, refuses to give consent or if the parental rights have been terminated.

Forms:

CS-0093, Release From Medical Responsibility

CS-0627, Informed Consent for Psychotropic Medication **(or equivalent form)**

CS-0206, Authorization for Routine Health Services for Minors

CS-0629, Psychotropic Medication Evaluation

Collateral Documents:

Child and Family Team Meeting Guide

20.18, Psychotropic Medication

20.57, End of Life Decisions for Children in Custody/Guardianship

Protocol for Death of Child/Youth in Department of Children's Services Custody-Guardianship