ADVICE FOR HEALTH PROFESSIONALS

Consent for medical services

For children residing in care settings under the statutory child protection program

Health professionals should contact Department of Families, Fairness and Housing (DFFH) Child Protection Practitioner or Team Manager when consent is required for medical services for a child in care except:

- in the case of a medical emergency
- in the case of a mature minor
- when the carer presenting with the child has an instrument of authorisation
- where a child is presenting with a Child Protection practitioner for an examination

How do I identify a child who might be in care?

Children in care refers to the placement of children and young people with caregivers other than their parents following intervention through the statutory child protection system.

Placements can be:

- **Kinship care** in the home of other relatives or friends of the family
- **Foster care** in the home of unrelated adults not previously known to the family
- **Residential care** in a group setting with rostered paid staff acting as carers.

It is possible that the child resides in care if they present at a health service with:

- a carer who is not their parent (kinship, foster or residential care worker)
- their allocated Child Protection practitioner
- an allocated case manager from a Community Service Organisation (CSO)
- a case manager from an Aboriginal Community Controlled Organisation (ACCO)

If a child presents with someone other than their parent please ask what their relationship is to the child and why they are bringing the child to the health service.

Why might consent processes be different for children in care?

For children in care it may not always be readily apparent who has the "parental responsibility" for the child to provide consent for any health related services.

Parental responsibility for children in care is determined by the child's protection order which is made by the Children's Court. In many cases the parent continues to retain parental responsibility for children in care but there are also statutory provisions which can impact on the consent process.

If you are not sure who has parental responsibility for the child, then health professionals should contact the allocated DFFH Child Protection practitioner or Team Manager for the child.

Child Protection can advise who has authority to provide consent and can arrange for consent to be provided by DFFH Child Protection.

For more information about who has parental responsibility for children under each type of Children's Court order, please visit: **www.cpmanual.vic.gov.au**

This educational material has been developed to assist health professionals with decision making about appropriate health care for children and young people. The information in this resource does not indicate an exclusive course of action or standard of care. It does not replace the need for application of clinical judgement to individual cases, or variations based on locality or facility type. This educational material does not constitute legal advice and should not be treated as such. The authors accept no responsibility for any loss incurred as a result of reliance upon the material.

For more information, please contact the Department of Health via email: **healthcarethatcounts@health.vic.gov.au**

The Vulnerable Child Health Project at The Royal Children's Hospital was supported by the Victorian Government.

Consent for medical services

The Royal Children's Hospital Melbourne

Exceptions to obtaining "parental" consent for children in care

Medical emergency	**If the doctor reasonably and honestly believes that the treatment is necessary to avert a serious and imminent threat to the patient's life or physical or mental health, then the doctor can legally proceed with the appropriate procedure without obtaining consent.** *(Medical Treatment Planning and Decisions Act 2016).* In these situations, the treatment must be in the patient's best interests and the doctor must believe it is essential to proceed without consent, not merely convenient. It may be prudent to seek the supporting opinion of another practitioner, although not essential. The decision to proceed without consent should be documented clearly in the medical record.
Mature minor	**Minors may legally be able to consent for themselves provided the doctor is satisfied the young person is of adequate maturity and understanding and is therefore competent to give consent.** The decision of whether a young person is a mature minor is specific to the situation. *Note: a young person may be considered of adequate maturity to consent to one procedure but not another.* The basis for the conclusion that the young person is competent to consent is determined by the doctor and should be documented in the medical record. The more significant the procedure or the associated risks, the more careful health providers need to be about ensuring the young person has the legal capacity to provide consent. The treatment or procedure must be in their best interests. *Note: while a mature minor may provide their own consent, they may not be able to refuse medical treatment that is in their best interests (unlike an adult).*
Instrument of Authorisation to consent to medical care	**There are two types of Instruments of Authorisation to consent to medical care:** The first type is to the CEO or specific authorised persons in a Community Service Organisation or an Aboriginal Community Controlled Organisation where power is delegated by the Secretary to consent for medical treatment, surgery, or other operations and admission to hospital if a registered medical practitioner advises it is necessary. • this power will only apply where a child is placed with the organisation and consent can only be provided by the nominated authorised representative and cannot be delegated to carers. S597 CYFA The second type is to carers living with the child (including foster carers, kinship carers and residential carers) to consent to medical care such as taking the child to a doctor for appointments or assessment, immunisations, dental care, day to day treatment of chronic or serious illness. S175 CYFA • this power will not extend to consent for surgical procedures or decisions for treatment that have long term implications for the child.
Health assessment/ examination	**Children in care have significantly poorer health outcomes than the general child population. Obtaining assessments of the child's health, diagnosis of specific conditions and recommendations for treatment are particularly important for children in care.** The Children, Youth and Families Act 2005 (CYFA) provides that: • the Secretary may at any time order that a person be examined to determine his or her medical, physical, intellectual or mental condition s597(1) CYFA. The Secretary's power under s597(1) is delegated to Child Protection Practitioners and therefore the Child Protection Practitioner presenting with the child will have arranged authorisation under this section of the CYFA.