

## Consent for medical and dental treatment of children and young people in statutory out-of-home care

### Overview

This fact sheet provides an overview of who has authority for providing consent for medical and dental treatments on behalf of children and young people in out-of-home care (OOHC), for whom the Minister for Family and Community Services (FACS) holds parental responsibility and who are being cared for by an authorised carer.

This fact sheet is relevant to children and young people in family based placements supervised by either non-government organisations (NGO's) or FACS. This fact sheet is available for FACS, NGOs and carers.

### Can a child 14 years old or above give consent to their own medical or dental treatment?

Yes, so long as the child has the maturity and capacity to understand what is being proposed by the medical or dental practitioner.

### Can FACS or NGO authorised carers provide consent to medical and dental treatment for children or young people in their care?

Yes, in certain circumstances. Authorised carers can consent to most day-to-day medical or dental treatment for a child or young person in their care (section 157, *Children and Young Persons (Care and Protection) Act 1998*) (the *Care Act*) including:

- Medical or dental treatment of a child or young person, not involving surgery (except for minor dental surgery), on the advice of a medical practitioner or dentist
- Medical or dental treatment involving emergency surgery, if certified (ideally in writing) by a medical practitioner or dentist as being urgent and in best interests of a child or young person. The urgency of the treatment is determined by the circumstances and the consequences for the child. It might include circumstances where the child's life is not in immediate danger but a delay in treatment is causing the child significant distress or severe pain.

It is important to note that the law requires authorised carers to immediately notify their designated agency (the agency or NGO which supervises the placement) if a child or young person in their care suffers a serious accident, illness or injury (clause 40 (2)(c), *Children and Young Persons (Care and Protection) Regulation 2012*).

To ensure children and young people in care are provided with timely and managed medical and dental treatment, it is important that authorised carers are fully informed of the range of circumstances for which they can (and cannot) give consent. Informing carers about the requirements for consent occurs through initial and ongoing carer training and through communications with their caseworkers. The child's *Health Management Plan* can support this cooperation between caseworker and carer to meet the health needs of the child.

## When is FACS consent required for medical or dental treatment?

Where an authorised carer does not have the authority to consent (as set out above), generally FACS must provide consent. This includes:

- Medical and dental treatment involving surgery (non-urgent)
- Medical interventions involving drug and alcohol programs
- Admission to and treatment within a psychiatric hospital
- Contraception for under 14 year olds
- Specialised invasive medical testing advised by a medical practitioner.

FACS may also become involved in the medical or dental care of a child or young person under the parental responsibility of the Minister in other circumstances, including:

- Where there is disagreement between the designated agency and the carer regarding the medical approach or a negative outcome from the medical approach, and there has been no resolution through normal processes set out under the [Case Management Policy](#)
- Where there is an allegation that the medical procedure was done without lawful authority and was therefore an assault on the child or young person. This should be immediately reported to FACS.

Wherever possible, consent should be obtained from FACS during normal business hours to avoid the need to contact the Child Protection Helpline. When after hours consent from FACS is sought by a health practitioner, it is important for FACS to obtain details about the proposed treatment, including the need for and the details of the proposed treatment and consequences if treatment is not provided. This information is critical for FACS to provide informed consent.

## Are there circumstances where neither FACS nor an authorised carer is able to consent to medical or dental treatment?

Yes, there are some circumstances where medical treatment can only occur with the approval of the court, including “special medical treatment” within the meaning of section 175 of the *Care Act* and a “special medical procedure” under the *Family Law Act 1975*.

## Who consents if the treatment is considered to be a medical emergency and necessary to save a child or young person’s life or to prevent serious damage to his/her health?

Consent is not required where a medical practitioner is of the opinion, that the treatment on the child or young person is necessary to save his or her life, or to prevent serious damage to his or her health.

## Can designated agencies give consent to medical and dental treatment?

No, designated agencies (with the exception of Barnardos) are not authorised to consent to medical and dental treatment for children and young people in OOHC on the Minister’s behalf.



Under section 140 of the *Care Act*, all designated agencies have responsibility to supervise the placements of children and young people in the care of the agency's authorised carers. In this way the *Care Act* makes a distinction between carers who have responsibility for day-to-day care decisions and designated agencies responsibility for supervising, directing and supporting carers as appropriate and required.

For example, designated agencies may have policies and procedures in place that require authorised carers to seek advice and endorsement of any medical and dental treatment, as outlined above, before consenting to certain treatments. Any policy decisions related to consent for medical and dental consent developed by the designated agency should be shared with authorised carers.

### When can Barnardos give consent to medical and dental treatment?

Barnardos has a delegation for certain aspects of parental responsibility (including a delegation to consent to a broader range of medical and dental treatments) from the Minister for certain children and young people, for whom that agency has case management. These decision making functions are set out in a formal Instrument of Delegation and Deed of Agreement with Barnardos.

### For more information

Please refer to the Medical and Dental Consent Tool on the FACS website. This Tool outlines who has authority to give consent for a range of medical and dental treatments for children and young people in OOHC.