

Medical and Dental Consent Tool

Introduction

This tool is to guide FACS, NSW Health, and designated non-government agency staff in making health decisions on behalf of children and young people in out-of-home care (OOHC). It outlines who has authority to give consent for a range of medical and dental treatments for children and young people:

- who reside in a foster care arrangement; and
- for whom the Minister for Family and Community Services (the Minister) holds all aspects of parental responsibility, or some aspects of parental responsibility which includes consent to medical treatment.

Authorised Carers¹ can consent to many day-to-day medical and dental treatments for the children and young people in their care. This ensures that these children and young people receive appropriate and timely medical and dental treatment, supported by their carer who knows and understands their needs best. In most other circumstances, consent must be obtained from FACS. For certain children and young people whose placement is managed by Barnardos, parental responsibility for medical and dental consent remains with Barnardos.

Children and young peoples' authority to consent

Children and young people aged 14 years and older can give consent to their own medical treatment if they have sufficient maturity and capacity to comprehend the proposed medical treatment.²

¹An authorised carer is defined under s137, *Children and Young Persons (Care and Protection) Act 1998* (the Act). An authorised carer has *care responsibility* for the child or young person. *Care Responsibility* is defined in s157 of the Act and includes a number of consents to medical and dental treatments as reflected in this document. It should however, be noted that the Minister and/or the Designated Agency that authorised the authorised carer may place limitations or requirements on the extent to which an authorised carer may exercise these functions (for example a requirement to discuss certain treatments with the child's caseworker and the requirement to advise the child's caseworker of certain treatments immediately).

²This is recognised in common law, and in NSW Health policy which provides that a child over the age of 14 years is able to consent to their own medical treatment provided they adequately understand and appreciate the nature and consequences of the operation procedure or treatment see: http://www.health.nsw.gov.au/policies/PD/2005/PD2005_406.html.

KEY
<p>Yes = person or organisation who has authority to consent to the treatment (unless Ministerial or designated agency policy directs otherwise)</p> <p>FACS Delegation = FACS delegate who has authority to sign the medical/dental consent form</p> <p>MCS = FACS Manager Client Services</p> <p>DCS = FACS Director Community Services</p>

Table A: DAY-TO-DAY MEDICAL AND DENTAL TREATMENTS

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ³	FACS consent required	Actions/ Notes
Administration of medication prescribed by a medical practitioner as well as 'over the counter' medicines on the advice of a pharmacist/medical practitioner	Yes	Yes	No	
Administration of psychotropic medication prescribed by a medical practitioner	Yes	Yes	No	Action: the authorised carer must immediately notify the designated agency with supervisory responsibility for the placement, if a child is prescribed a psychotropic drug. ⁴

³ Barnardo's exercises the powers of Parental Responsibility (PR) under the Deed of Agreement.

⁴ Section 26(1), Children and Young Persons (Care and Protection) Regulation 2012.

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ³	FACS consent required	Actions/ Notes
				<p>Psychotropic medication forms only one part of a comprehensive treatment plan which is documented in the Behaviour Support Plan.</p> <p>The Behaviour Support Plan must be developed by a qualified professional and approved by the principal officer of the designated agency with supervisory responsibility for placement.⁵</p>
Contraception for 14-15 year olds - prescription of medication and devices for contraceptive purposes (e.g. diaphragm, contraceptive implants).	Yes	Yes	No	<p>Action: Consider whether a Risk of Significant Harm report needs to be made to the FACS Helpline.</p> <p>Action: Authorised carer to advise their caseworker.</p>
Dental - general check-ups	Yes	Yes	No	
Dental - ordinary dental treatment, on the advice of a dentist, including those conditions	Yes	Yes	No	

⁵ Section 26(2), Children and Young Persons (Care and Protection) Regulation 2012.

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ³	FACS consent required	Actions/ Notes
identified in the child's case plan for example, treatment for gum disease.				
Dental surgery (minor) on the advice of a dentist - a tooth extraction, the filling of a decayed tooth, root canal work or a repair to a broken or chipped tooth, not requiring general anaesthetic.	Yes	Yes	No	Action: Authorised carer to advise their caseworker.
Dental surgery (major) - urgent Where a dentist certifies in writing that the surgery needs to be carried out as a matter of urgency, in the best interest of the child or young person.	Yes	Yes	No	Action: Authorised carer to advise their caseworker. Clause 40(2)(c) of the Care Regulations require an authorised carer to immediately notify the designated agency if the child or young person suffers a serious accident, illness or injury.
Emergency Medical Treatment	N/A	N/A	N/A	No consent is required. S174, <i>Children and Young Persons (Care and Protection) Act 1998</i> sets out that emergency medical treatment can be carried out <i>without consent</i> if the medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the child or young person in

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ³	FACS consent required	Actions/ Notes
				order to save his or her life or to prevent serious damage to his or her health.
Eye and hearing tests	Yes	Yes	No	
Immunisations	Yes	Yes	No	
Medical - general check-ups	Yes	Yes	No	
Medical treatment not involving surgery, on the advice of a medical practitioner, including those conditions identified in the child's case plan for example, treatment for asthma or diabetes.	Yes	Yes	No	
Medical treatment involving surgery (urgent)⁶ Where a medical practitioner certifies in writing that the surgery needs to be carried out as a matter of urgency, in the best interest of the	Yes	Yes	No	Action: Authorised carer to advise their caseworker. Clause 40(2)(c) of the Care Regulations require an authorised carer to immediately notify the

⁶ *Urgent medical treatment* (s157(1)(b), *Children and Young Persons (Care and Protection) Act 1998*) is not defined in the legislation. It may include but is not necessarily limited to circumstances where delaying treatment in order to seek consent from FACS would cause the child unreasonable distress or the child would be in severe pain as a result of the delay.

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ³	FACS consent required	Actions/ Notes
child or young person.				designated agency if the child or young person suffers a serious accident, illness or injury.
Testing - where medical tests are necessary as advised by a medical practitioner that do not involve surgical procedures. See table B for specific consents in relation to HIV and Hep C testing and DNA testing to establish parentage.	Yes	Yes	No	

Table B: OTHER MEDICAL AND DENTAL TREATMENTS

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ⁷	FACS consent is required	Actions/FACS Delegation/Notes
Contraception for under 14 year olds - prescription of medication and devices for	No	No	Yes	FACS delegation: MCS

⁷ Barnardo's exercises the powers of Parental Responsibility (PR) under Deed of Agreement.

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ⁷	FACS consent is required	Actions/FACS Delegation/Notes
contraceptive purposes (e.g. diaphragm, contraceptive implants).				Action: Consider whether a Risk of Significant Harm report needs to be made to the FACS Helpline.
Dental surgery (major) - non-urgent May involve use of general anaesthetic.	No	Yes	Yes	FACS delegation: MCS
Drug & Alcohol rehabilitation treatment programs	No	Yes	Yes	FACS Delegation: MCS
End of life medical intervention/decisions including withdrawal of treatment.	No	No	Yes	FACS Delegation: Deputy Secretary responsible for the District
Medical treatment involving surgery (non-urgent)	No	Yes	Yes	FACS Delegation: MCS
Medical treatment for terminal illness	No	No	Yes	FACS Delegation: DCS or Director Metro Intensive Support Services
Psychiatric Hospital - admission (as a voluntary patient).	No	Yes	Yes	FACS Delegation: MCS

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ⁷	FACS consent is required	Actions/FACS Delegation/Notes
Psychiatric Hospital - treatment (as a voluntary patient) giving consent to time limited seclusion, physical restraint, chemical restraint or sedation of a child in a psychiatric hospital.	No	Yes	Yes	FACS Delegation: MCS
Termination of pregnancy	No	No	Yes	FACS Delegation: MCS
Testing - DNA testing to establish parentage.	No	Yes	Yes	FACS Delegation: MCS
Testing - where the purpose of the testing is to determine a child's HIV/AIDS or Hepatitis C status and testing has been advised as necessary by a medical practitioner.	No	Yes	Yes	FACS Delegation: MCS
Testing - where the testing is necessary as advised by a medical practitioner and involves surgery or an invasive procedure (for example internal cameras).	No	Yes	Yes	FACS Delegation: MCS
Testing - where the testing is not necessary for the medical treatment of the child but is for another reason (for example to contribute to	No	No	N/A	FACS would not support the testing of a child unless the testing is necessary for their

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ⁷	FACS consent is required	Actions/FACS Delegation/Notes
research).				medical treatment.
Any non-emergency treatment intended or likely to render the child permanently infertile	No	No	Yes, after consent has been given by the tribunal/court.	The Guardianship Division of the NSW Civil and Administrative Tribunal, Family Court of Australia or Supreme Court must authorise this procedure for minors (0-18 years old). FACS Delegation: DCS after consent has been given by the tribunal/court.
Vasectomy or tubal ligation	No	No	Yes, after consent has been given by the tribunal/court.	The Guardianship Division of the NSW Civil and Administrative Tribunal, Family Court of Australia or Supreme Court must authorise this procedure for minors (0-18 years old). FACS Delegation: DCS after consent has been given by the tribunal/court.
Any medical treatment that involves an experimental procedure that does not conform to the document entitled <i>National Statement on Ethical Conduct in Research Involving Humans</i> published by the National Health and Medical	N/A	N/A	N/A	This is an offence under s175(1), <i>Children and Young Persons (Care and Protection) Act 1998</i> .

Medical / Dental treatment or decision	Authorised carer can consent (FACS or NGO)	BARNARDO'S can consent ⁷	FACS consent is required	Actions/FACS Delegation/Notes
Research Council (NHMRC) in 2007 and updated in 2013.				
<p>The administration of a drug of addiction within the meaning of the <i>Poisons and Therapeutic Goods Act 1966</i> over a period totalling more than 10 days in any period of 30 days and an exemption has <u>not</u> been granted. A copy of the general exemption be accessed at: http://www.community.nsw.gov.au/docswr/assets/main/documents/general_exemption_notice.pdf</p>	N/A	N/A	N/A	<p>This is an offence under s175(1), <i>Children and Young Persons (Care and Protection) Act 1998</i>.</p> <p>Note: Dexamphetamine and methylphenidate ("Ritalin") for the treatment of ADHD are exempt.</p>
Treatment in cases of gender dysphoria	N/A	N/A	The Minister must consent to the making of a court application.	<p>Note: An application is to be made to the Family Court for authorisation of both Stage 1 and Stage 2 treatments.</p> <p>FACS Delegation: The Minister must consent to the making of a court application.</p>