



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

HSE Children and Family Services

Staff Guidelines for Obtaining Consent for Non Emergency Treatment/Services from Parents of Children and Young People Under the Age of 18 years.

**Children and Families Document
(Ref C+F 2/2009)**

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1. Purpose

These procedures are intended to provide guidance to HSE staff working in community settings on the legal requirements for obtaining valid patient consent. Most hospitals have their own guidance documents, including the three children's hospitals in Dublin. These procedures apply to children under the age of 18 years. Anyone over 18 years old is legally an adult. Anyone less than 18 years old is a minor / child and the consent of guardians for non emergency treatment or services is required as set out below.

2. Introduction

Consent is a parent's/ guardian's/patient's agreement for a health care professional to provide care. Parents/guardians have a right to decide what is in the best interest of their child and healthcare professionals therefore have a corresponding legal obligation to provide sufficient information to ensure that such decisions are taken on an informed basis.

Information should be given, and consent obtained, by a health care professional who is competent and able to respond to and answer any questions the parent/guardian/patient may have, and give appropriate explanations regarding the procedure. In case of doubt/ uncertainty, it is recommended that healthcare providers seek further legal advice.

3. Guiding Principles

- The welfare of the child is paramount;
- Working in partnership with parents is beneficial for children;
- The views of children must be taken into consideration in accordance with their age and level of maturity and understanding.

4. Emergency situations

A clinician may intervene in the case of medical emergency without parental consent under the "Doctrine of necessity". This is a common law doctrine developed through case law. It applies to an emergency situation where a doctor treats a patient/client, in the absence of consent, in the best interests of the patient/client, where the treatment is necessary to save the life or preserve the health of the patient/client. The medical practitioner must demonstrate that he attempted to ascertain whether or not an advance directive existed which may be indicative of the patient's/client's wishes/consent.

5. Who can Give Consent

Only parents who are guardians and guardians can give consent on behalf of their children. The Health Service Executive can give consent in relation to a child who is the subject of a care order. Further elaboration is provided below.

6. What patients/clients should be told

Before being asked for their consent to any treatment, investigation or examination parents/guardians should be given the information required for "informed" consent (see above), and also:

- be specifically told if the treatment is part of a clinical trial or is in any other way experimental;
- be given the name of the doctor who will have overall responsibility for the patient/client and have explained, where appropriate, that no guarantee about who will carry out the procedure has been given;
- be reminded that they can withdraw consent at any time and that they always have the right to a second opinion.

7. Definition of Legal Guardian of a child

- Where the child's parents are not married, the child's mother only;
- Where the child's parents are not married, the mother of the child **and** the child's father or any other named person when appointed guardian further to a successful court application for guardianship;
- Where both parents are married, the child's mother and father are legal guardians;
- Following a separation or divorce, both parents remain the child's legal guardian, even if the child is not living with them and they have not been awarded custody of the child;
- Where the children's parents are not married and the mother of the child and the child's father have entered into an agreement which has the effect of making the father the guardian of the child.

8. Procedures

1. At the point of referral, the names and contact details of any legal guardian of the child will be requested and recorded, and written confirmation of their consent obtained on the Consent Form. Where a legal guardian may not be residing with the child, the wishes of the child's guardian to be informed of the child's care and/or treatment will be sought by letter or phone and recorded on the Consent Form. If it is not possible to contact a guardian or this information is unknown/not provided, this must be recorded on the form which will be placed on the child's file. Where a court order is in place to prohibit a guardian's rights to be involved, this must be seen by the HSE.

Please note: *A court order prohibiting unsupervised contact with a child does not prohibit a guardian's right to be involved in decision making concerning their child. An application for such directions under the Guardianship of Infants Act 1964 must be granted should this be necessary.*

2. Consent of both Guardians is required for treatment/service unless one guardian is not contactable or indicates that they do not wish to be consulted or that they wish the custodial guardian to make any necessary decisions on their behalf.
3. Where a child's guardians are living at the same address, and do not attend with the child together, the consent of one guardian for further treatment decisions will be sufficient unless indicated otherwise at the point of referral.

4. Where, in the view of the service provider, the presence of both guardians is creating conflict and is not considered to be in the child's best interests, the custodial parent will attend with the child where mutual agreement between the guardians cannot be reached in relation to attendance arrangements. A commitment will be given to keep the non-custodial parent updated, by telephone during the scheduled appointment if necessary, of any treatment decisions which are required.

9. Where children are in the Care of the HSE the following applies

- (a) Voluntary care; consent is required from the guardian/guardians unless a Court order has been made dispensing with that person's consent.
- (b) Emergency Care Order; the consent of a guardian/guardians is required or in the alternative, application can be made pursuant to Section 17(4) in regard to medical treatment.
- (c) Interim Care Order; the consent of a guardian/guardians is required or in the alternative, application can be made pursuant to Section 13(7) in regard to medical treatment.
- (d) Care Order; it would be good practice to seek the consent of the guardian/guardians, however, the Health Service Executive is authorised pursuant to Section 18 to consent to any necessary medical or psychiatric treatment, assessment or examination.
- (e) Children who are in foster care for five years or more:
In accordance with Section 4 43A of the Child Care (Amendment) Act 2007 a foster carer or relative may make an application, and be granted an Order, giving them like control over the child as if they were the child's parent; provided that:
- The child is in their care for five years or more
 - The granting of the Order is in the child's best interest
 - The HSE consents to the making of such an Order
 - Parental consent is obtained for children in voluntary care or on temporary Orders
 - Patents are given notice of the application in the case of children who are subject of full Care Orders
 - The wishes of the child have been given due consideration, as appropriate

The effect of such an Order will be to grant such foster parents/carers the right to do all that is reasonable to safeguard and promote the child's welfare, health and development. This includes the giving of consent to any necessary medical or psychiatric assessment, examination or treatment; and to the issuing of a passport.

- (g) Urgent medical treatment

In the case of an emergency life-threatening situation, the welfare of the child is the paramount consideration and the doctrine of necessity will apply whereby a medical practitioner may override the requirement of consent.

10. The parent is a child

In situations where the parent him/herself is a child then:

- In an emergency situation the consent process is dispensed with and the doctor must treat the child, as per the Doctrine of Necessity.
- If the child of the parent requires a therapeutic procedure (but not emergency) obtaining such consent presents a difficulty since it is uncertain whether or not a minor parent can consent to treatment for their child since minors are deemed to be legally incompetent to give consent.

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In general, some leeway is given in relation to the minor unmarried mother of a child, because in law, the unmarried mother of a child is the sole legal guardian. The mother's wishes, providing she is competent to understand the proposed treatment, are taken into account. It would be prudent practice to attempt to:

- Obtain the consent of an appropriate next of kin who is competent to consent and which consent is in the best interests of the child
- Include all parties in the consent process including the parent
- Ensure that if the next of kin does give consent that their signature and name is recorded on the consent form and
- Ensure that such situations are recorded in detail in the patient's medical record/notes
- In case of doubt/ uncertainty, it is recommended that healthcare providers seek further legal advice.



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SAMPLE CONSENT FORM

Child's Name:

Address:

Date of Birth:

Name(s) of Legal Guardian(s)¹

1. Name:

Address

Contact Number:

I do/do not (*delete as appropriate*) wish to be contacted in relation to my child's care/treatment if I cannot attend with my child. Please provide any further comments on reverse of form

Please tick

Are you the sole legal Guardian for your child?

Yes No

**If no, please provide contact details below. Please note:
Consent of both Guardians must be requested.**

2. Name:

Address (if different)

¹ This will be explained to you in accordance with HSE Policy

Contact Number:

I do/do not (*delete as appropriate*) wish to be contacted in relation to my child's treatment if I cannot attend with my child. Please provide any further comments on reverse of form

I consent for my Child to be seen/receive treatment from.....

Signed; _____ Signed: _____

Guardian _____ Guardian² _____

Date: _____ Date: _____

OFFICE USE ONLY³ -

Additional Comments/Wishes of Guardians

#Staff should remain aware of the general principle that regardless of the signing of any forms a guardian is entitled to be consulted in relation to all aspects of the welfare of their child.

² At least one Guardian must sign. Attempt to contact second Guardian recorded on reverse of form

³ To include action taken to contact legal guardians and the outcome