Policy Brief SAFETY

Medical Consent

Children and youth in foster care are at a "higher risk for persistent and chronic physical, emotional, and developmental conditions because of the multiple and cumulative adverse events in their lives".[1] This causes them to frequently need medical care and procedures that require consent from their biological parents. These may include but are not limited to: Diagnostic, Therapeutic, Surgical, and Anesthesia care (except in times of medical emergencies[2]); and the prescription for certain medications. For some of our children and youth, receiving medical consent for a medical treatment can become a timely process especially in instances when the biological parent cannot be located or refuses to give consent.

In those cases, Nevada's child welfare service agencies lack policies and procedures to ensure foster children receive "treatment as soon as practicable after the need for such services has been identified"[3], as ensured in the Nevada Foster Child Bill of Rights. Each child care service agency has their own practices and timeframes in which they use to ensure a child receives care if they cannot readily receive the biological parent's consent. These practices can sometimes lead to a child waiting days, weeks, or even months before receiving care, or in a few instances only being treated after it was determined to be a medical emergency.

When a child becomes a ward of the state, it is imperative that Nevada acts in the best interest of the child and takes into consideration their rights as written in the Nevada Foster Child Bill of Rights, before ensuring the biological parent's parental rights are not violated. The following are different types of policies and procedures that states have legislatively established to protect the medical rights of a foster child[4]:

- **Caregiver's Authorization Affidavit** – Caregivers can fill out a form that states that the parents of the child have been advised that the caregiver will have the power to authorize medical care of the child and have not objected.
- **Voluntary v. Non-voluntary placement, Routine v. Non-routine** – Some jurisdictions also categorize medical consent based on whether or not a child was placed voluntarily or involuntarily in foster care and whether the treatment is routine or non-routine. For example, when a minor is placed voluntarily into care, the parent/guardian must give prion written consent before the minor can receive routine examinations and treatment and must also give prior written consent to each instance of non-routine treatment for the minor. If the parent/guardian does not consent or cannot be located, a court order must be obtained by the foster care agency. In involuntarily placements, the county child and youth agency caseworker can authorize routine medical care and the parent or guardian must authorize non-routine treatment. If consent from the parent is not obtained, then a court order must be obtained.

[1] http://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-foster-care-america/Pages/Fostering-Health.aspx
[2] https://www.leg.state.nv.us/NRS/NRS-129.html#NRS129Sec040
[3] http://www.leg.state.nv.us/Session/77th2013/Bills/AB/AB393_EN.pdf
[4] Research and information provided to the Children's Advocacy Alliance from State Policy and Reform Center (SPARC)

- **Caseworker consent** – A court can designate the caseworker to provide medical consent for children in foster care. Often these consenters have to complete training. In some jurisdictions, the child and youth agency can also delegate their authority to foster parents.
- **Court Order** – Some states only allow courts to make medical decisions regarding the child.
- **Established Reasonable Effort Timeline** – A few states have established a time limit in which welfare agencies would have made a reasonable effort to receive consent from a parent. If the parent has not been located, or has not acted on the request to give consent, the state would then have the power of authority to give consent.

Recommendations:

In order to best promote the rights of a foster child to receive appropriate medical care in a timely fashion, the Children's Advocacy Alliance recommends the state enact the following provisions.

- **Establish a Reasonable Effort Timeline** – If a parent cannot be located and/or has not acted on the request to give consent within 72 hours, the state should have the authority to give consent on behalf of the medical child. If a medical doctor declares that the procedure and/or treatment require immediate attention, the child welfare agency may provide consent if it is determined that the procedure and/or treatment are in the best interest of the child. In this case, biological parents must be notified within 24 hours and the child welfare agencies shall make reasonable efforts to notify the parent(s).
- **Allow for the use of Affidavits** – A parent should be informed that if they so choose, they can allow a third party, such as the state or a relative, to give medical consent on behalf of the child. This affidavit could include exclusions to certain procedures based on religious beliefs and/or desires of the parent.
- **Remove a parent's right to give medical consent, if they are the reason they child needs the treatment and/or procedure** – If a parent caused physical harm to a child that requires medical treatment, the parent should not be able to decide when/if the child receives such treatment.
- **Give children over the ages of 16 the ability to consent to some forms of treatment** – Assuming the child is competent, a child should be given the ability to consent to some forms of medical treatment.

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