CWM TAF MORGANNWG GUIDANCE REGARDING CONSENT FOR MEDICAL TREATMENT FOR CHILDREN LOOKED AFTER

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Scope

This guidance has been developed to ensure a consistent approach to Children Looked After who require medical procedures setting out a clear pathway for CTMUHB and CTM Children Services on issues of consent.

This guidance is intended to compliment the All-Wales Model Policy for Consent to Examination or Treatment for CTMUHB staff and should NOT replace it.

Children 'Looked After'

For the purpose of this document children looked after are defined as those who are cared for by the local authority under the following legislation:

Sec 76 of the Social Services & Wellbeing Act 2014
Voluntary agreement by those with parental responsibility for the child to be cared for by the local authority.

Sec 31 Children Act 1989 - Care Order
The Court can create a Care Order (CO), placing a child in the care of a designated local authority, with parental responsibility being shared between the parents and the local authority. It can only be made if the court is satisfied that 'the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given, if the order were not made. The court may make an interim care order (ICO) (for up to eight weeks in the first instance) to investigate the child's home circumstances.

Sec 22 Adoption and Children Act 2002 - Placement Order
When a Placement Order is granted to the Adoption Agency, they have the authority to restrict the parental responsibility of the child's parent or guardian. The Adoption and Permeance Panel may advise on the extent to which prospective adopters may exercise parental responsibility including delegated responsibility to consent for medical treatment.

Children living away from home but not 'looked after'

There are other circumstances where children may not live with their birth parents, for example:

They may reside with another family member through a private family arrangement or through private application through the court such as a Child Arrangement Order (CAO) or Special Guardianship Order (SGO). These children are not looked after by the local authority and the All Wales Policy as noted above should be adhered too.

Parental Responsibility and Delegation

Delegating Authority means that a person who has Parental Responsibility may arrange for some or all of their responsibilities to be met in certain circumstances by someone else. Birth Mothers, (and possibly Birth Fathers), retain their Parental Responsibility when a child becomes Looked After. If a child is placed under Section 76 of the SSWA14, the Local Authority does not have Parental Responsibility and so agreement must be reached about what decision making the parents will delegate to the Local Authority and to the Foster Carers / Residential Childcare Workers. A person who does not have parental responsibility but has care of a child / young person (e.g. a foster carer), may do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child / young person's welfare. In an emergency, if no agreement has been made, the Carer may do what is 'reasonable' and statutory guidance states what is 'reasonable' will depend on the urgency of the situation and how practical it is to consult a person with parental responsibility.

Who can Delegate Authority?

If the Local Authority has an Emergency Protection Order, Interim Care Order or Care Order, the Local Authority has the authority to delegate. (NB Parental Responsibility vested under an Emergency Protection Order is limited and subject to a number of specific duties, a local authority cannot consent to a medical examination or other assessment of the child unless the court has given a specific direction.)

If the Local Authority does not have such an Order, it is the parent, or someone else with parental responsibility, who must agree to delegate authority to the Foster Carer.

There are some instances whereby a young person who is 16 or over, or under 16 but considered mature enough to do so, can consent in their own right, e.g.:

- From the age of 16 a young person can consent to their own Care Plan if they are Looked After by the Local Authority and there is no court order in place.
- A young person aged 16, (or younger if considered by medical staff to have sufficient understanding of the implication of treatment), can consent to their own medical treatment.
- Parents / persons with Parental Responsibility should be helped to understand the benefits to their child of appropriate delegation to the Local Authority and Foster Carers / Residential Childcare Workers.

Key Principals

- Effective delegation of authority should minimise delays in decision-making and maximise the child / young person's opportunity to enjoy their childhood and a full family life;
- In practice this means working out, as far as possible, the areas in which decisions can be delegated before the need to take them occurs;

- Young people's views and feelings should be taken into account when discussing the issues in relation to delegated authority;
- Parents must be supported and informed so they can play as full a part as possible in their child / young person's lives and must be clear about what has been agreed;
- Foster Carers / Residential Childcare Workers should be enabled and supported to take everyday decisions about their looked after child where appropriate. In long-term placements this is even more important;
- A Foster Carer's span of responsibilities should take account of their wishes and feelings about undertaking the tasks involved;
- Decisions about delegation of authority should be based on good quality assessments of need and risk of the individual child / young person and Foster Carer;
- Foster Carers / Residential Childcare Workers should be trained and supported to undertake appropriate risk assessments in areas in which they are authorised to make decisions.

Placement Planning

When a child becomes 'looked after', consent must be obtained wherever possible, usually from the parent, or a person with Parental Responsibility, for the following:

1. Urgent or emergency medical treatment.
2. First aid, health care assessments, advice and treatment, including immunisations.
3. Allowing the child to participate in swimming, outdoor or other pursuits which have a risk attached to them.
4. Whether the child can be administered non-prescribed medicines (such as Paracetamol) or home remedies.
5. Overnight stays with friends away from the foster home or residential home.

Where there is a person who holds Parental Responsibility, such consent must be given, in writing, when completing the Placement Information Record.

Having secured initial overarching consent, it may be necessary for the child's social worker to seek further specific consent for the child to participate in activities/events which are outside the normal scope of those which a looked after child would usually access.

The Placement Plan should help the Foster and/or Kinship Carers or Residential Childcare Workers understand what decisions they can make.

Where authority has been delegated, the person with parental responsibility still remains liable in law for any failure to meet any part of their parental responsibility.

A person to whom authority has been delegated may be liable if the decision they made was negligent or criminal.

Specific consent will usually also be required for holidays, school/educational visits inside & outside the UK.

When the parent, or person with Parental Responsibility, gives consent to medical assessments, treatment and advice, it should be understood that children aged sixteen and over, and others under that age who have sufficient understanding, may override the consent in some circumstances. This is explained below.

Health Care Consent

The Placement Plan will show clearly where the Foster Carer / Residential Childcare Worker has delegated authority to take decisions or give consents, both in emergencies and in respect of planning treatment.

Routine medicals

- Foster Carers / Residential Childcare Workers should be able to give and sign consent. They must inform the Social Worker of the outcome.

Immunisations

- Foster Carers / Residential Childcare Workers should have delegated authority wherever possible. Concerns about particular immunisations should be explored with parents at the start of the placement.

Non-routine medical treatment

- The Placement Plan will consider who can give consent to emergency treatment. Foster Carers / Residential Childcare Workers can do what is reasonable in an emergency. More intrusive or planned procedures should be discussed in advance and delegation made clear.

Optician

- Routine eye and sight tests should be delegated.

Dentist

- Foster Carers / Residential Childcare Workers should be able to consent to routine examinations and treatment where possible.

Key Practice Points

- The Placement Planning Meeting is the forum to share information and to sort out who does what and agrees what, when a child / young person is placed. It

should be focused on ensuring the day-to-day needs of the child / young person are met with the minimum of disruption. It is also concerned with ensuring that the child / young person can feel as normal as possible in care.

- Parents, Foster Carers / Residential Childcare Workers and children (subject to their age and understanding) should attend a placement planning meeting before the placement begins, or, where this is not possible, within five days after the placement starts in order to discuss and ensure that there is clarity about who will have the authority to make particular decisions.
- Parents should be given all the information they need to reach a decision about delegation of authority. They should be given full opportunity to discuss any concerns they have with the social worker and should be kept informed about decisions made about their child / young person.
- Written consent must be obtained from a parent or person with Parental Responsibility when a child becomes Looked After. If consent is refused or any conditions are placed upon the consent, details of the refusal or conditions must be recorded in the child's Placement Information Record.
- Sharing information about day-to-day care and routines is essential but not enough in itself. Foster Carers / Residential Childcare Workers cannot care safely and make decisions without good quality information about the history of the child / young person and the family. Social Workers must ensure that Foster Carers / Residential Childcare Workers receive this.
- Delegation of authority should be revisited at every review and discussed with all the parties between reviews. Any changes must be incorporated into the Placement Plan by the Social Worker. This will ensure that changes in the child / young person's circumstances, or in the parent's willingness to delegate authority, or the Foster Carers / Residential Child Care Worker's skills and confidence to take on authority, can be reflected in that plan.
- Delegations of authority have to be agreed by those with parental responsibility. A Foster Carer / Residential Childcare Worker never has parental responsibility for their looked after child; they can make decisions only acting on behalf of the Local Authority and parent. Parental responsibility cannot be transferred.
- If the child on a Care Order or Interim Care Order requires more serious treatment and the parent is unable/unwilling to consent or where they cannot be contacted, a distinction should be made between urgent but not life-threatening treatment and non-urgent behaviour.

Urgent Care

Section 3(S) Children Act 1989, provides that a person who does not have Parental Responsibility for a particular child/young person but who has care of the child/young person may do whatever is reasonable in all circumstances of the case for purpose of safeguarding or promoting the child/young person's welfare.

Life threatening usual implies an emergency situation and in those circumstances a doctor can treat without consent.

Non Urgent Care

For non-urgent treatment of a child/young person where parents are unwilling to give consent, the Local Authority should apply for leave to make application for a Specific Issues Order under Section 8, Children Act 1989. Legal advice must be sought following discussion with the Service Manager.

Where appropriate, senior management will give consent for a Social Worker or Team Manager to attend the hospital, discuss the surgery, anesthetic and risks with the doctor(s), and sign consent. The Social Worker, Team Leader or deputy should complete internal processes for senior management to sign, and then attend the hospital themselves to discuss and sign the hospital consent form.

Children of 16 and over have the right to consent to medical treatment and some children below 16 may be regarded as of sufficient understanding and maturity to consent to medical treatment without the need for parental consent. If a child or young person does not agree to disclosure, there are still circumstances in which the information could be disclosed. Health Practitioners should refer to Principles of Confidentiality- Professional Standards GMC (46)

Other than in exceptional circumstances, all reasonable steps should be taken to inform the parent(s) or others with Parental Responsibility before medical advice or treatment is sought for a Child Looked After. If this is not achieved, they should be informed as soon as practicable thereafter. The level of information imparted should reflect the current Care Plan.

Steps should always be taken to promote decision-making on the part of children and to ensure their views and wishes are obtained, considered and accounted for.

It is the responsibility of the child's social worker, together with residential staff and foster carers to support the child to engage with medical professionals. The older and more mature a child, the greater weight should be given to their views. Indeed, a doctor may regard a child as Fraser Competent i.e. capable of giving or refusing to give consent, even if under sixteen. This will be the decision of the medical professional involved. For such consent by a child to be valid, it must be informed and freely given for those under as well as over 16 years.

In an emergency, when urgent medical treatment is required and every effort has been made to locate parents or a person with Parental Responsibility, the following may apply:

- A child who has reached his/her sixteenth birthday may give consent;
- A responsible adult acting in loco parent is, may give consent on the parents' behalf so long as all reasonable steps have been taken to consult the parent(s) or those with Parental Responsibility and such action is not against their expressed wishes. In the case of a child who is looked after, this will

involve the relevant senior manager having a discussion with the medical professional involved before considering whether it is appropriate to give consent.

- Dependent on the age and level of understanding, a child who has not reached the age of sixteen may be regarded by a doctor as capable of giving consent (Fraser Competent);
- In a 'life or limb' situation, a doctor may decide to proceed without any consent.
- Consent should be given in writing, but it is equally valid if given verbally, provided it was informed and freely given. Written consent is preferred where children are in receipt of services away from home and may require urgent medical treatment in an emergency. Where it is only possible to acquire verbal consent, it should be given in the presence of a reliable witness e.g. acting on behalf of the Local Authority.

CTMUHB Notification to SSD

Upon identifying a child is looked after the relevant department of CTMUHB will ensure timely communication with the relevant local authority and the child's social worker regarding any health needs including any planned medical procedures. In the event of a 'life or limb' emergency, the doctor will make a judgement based on the needs of the child and will communicate with the relevant SSD as soon as is reasonably practical.

Signing Consent

Good practice dictates that parental consent should be sought for all medical, surgical or psychiatric treatment. The placement plan should be consulted.

A consent form must be signed, and this may only be done by the person who has been given an explanation of the procedure. This applies to:

- All surgical procedures
- Medical and dental treatment that requires anaesthetic
- Contraception

The person with delegated responsibility will need to ensure their availability on the day of the procedure and provide contact details in the event that they are required to discuss any matters related to the procedure and/or return to the setting. In some circumstances, due to the complexity and nature of the treatment being provided to the child it may require the person with delegated responsibility remaining with the child throughout the procedure. The likelihood of such should be discussed in pre-admission meetings and agreed in advance wherever possible.

Pathway for the gaining of consent for surgical procedures for a “Child Looked After” on the Paediatric wards in Cwm Taf Morgannwg Health Board

Informed face to face consent must be completed by the person who Holds PR or the person who has designated authority, this is undertaken by the Doctor who is responsible for obtaining consent.

YES

NO

Is the Child Looked After by the local Authority as defined in the CTM Guidance regarding Consent for Children Looked After for Medical Treatment

If a child/ren are looked after under Sec 76 SSWBA 14 parents hold parental responsibility and they are required to consent. Children Services will liaise with parents as appropriate.

If a child/ren are subject to an Interim/Full Care Order the local authority has shared parental responsibility and delegated authority to consent. Children Services will have a named person who can sign and will liaise with parent as appropriate.

If the child/ren are subject to a Placement Order the prospective adopters may exercise parental responsibility including delegated responsibility to consent for medical treatment

In circumstances where the child is living away from birth parents but not deemed ‘looked after’ CTMUHB staff need to ensure that persons with Parental Responsibility brings evidence of such
i.e. Special Guardianship Order/ Child Arrangement Order

Registered nurses caring for the patient to inform the band 6/7 on duty that there is a “looked after child” attending surgery as soon as possible after admission, so that both nurses can check that the consent is correct and pathway followed

Registered nurse to inform Theatre reception that we have a “looked after child” attending for theatre

The ward staff to request a member of the theatre team to attend the paediatric ward once the person who has designated authority has attended the ward. The theatre staff member must confirm the consent with the responsible person who has signed the consent form before they leave the department. This is in order for them to complete the “WHO check list” However, the expectation is that they must be available for contact from the hospital if required.