

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER b: PROGRAM AND TECHNICAL SUPPORT

PART 327
PERMANENCY ADVOCACY SERVICES

Section

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AUTHORITY: Implementing The Abused and Neglected Child Reporting Act (Ill. Rev. Stat. 1983, ch. 23, par. 2055), Sections 11 and 12 of "AN ACT in relation to the adoption of persons and to repeal an Act therein named" (Ill. Rev. Stat. 1983, ch. 40, pars. 1511 and 1512); "AN ACT creating The Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein named" (Ill. Rev. Stat. 1984 Supp., ch. 23, par. 5005); Birth Control Services to Minors" (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 4651); and Consent by Minors to Medical Operations (Ill. Rev. Stat. 1983, ch. 111, par. 4501 et seq.) and authorized by Sections 701-11, 703-6, and 705-2 et seq. of the Juvenile Court Act (Ill. Rev. Stat. 1983, ch. 37, pars. 701-11, 703-6 and 705-2 et seq.).

SOURCE: Adopted and codified at 5 Ill. Reg. 6737, effective June 26, 1981; amended at 9 Ill. Reg. 13947, effective September 16, 1985.

Section 327.1 Purpose

The purpose of these rules is to explain the rights and duties of the Guardianship Administrator of the Department of Children and Family Services, or designee. The Guardianship Administrator makes important decisions affecting the general welfare of children and assures and protects the legal rights of children served by the Department.

Section 327.2 Definitions

"Children for whom the Department has legal responsibility" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parent(s) has signed an adoptive surrender or voluntary placement agreement with the Department.

"Consent" or "Consenting" for purposes of these rules means a legally binding commitment resulting from an informed, deliberative process in which the consenting party signs a formal document. The consenting party may be the Department's Guardianship Administrator, or designee, or the children's parents.

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"Designee" means those Department staff who have been appointed by the Director and authorized by the Guardianship Administrator and have been given formal authority to authorize and consent to matters concerning children for whom the Department has legal responsibility.

"Drug" means any medication taken orally, injected into the body, or administered by other means, which requires the consultation of a physician for its use or requires a written prescription for its use or purchase.

"Elective medical treatment or surgical procedure" means major medical care, as defined in these rules, which may be delayed for 72 hours or more without jeopardizing the life, health, or safety of the patient or subjecting him to probable physical harm.

"Emergency medical treatment or surgical procedure" means immediate ordinary or major measures necessary to preserve the life, health, or physical well-being of the patient.

"Guardianship Administrator" means that person designated by the Director of the Department of Children and Family Services to serve as guardian or custodian of children accepted by the Department pursuant to the Juvenile Court Act, An Act Creating the Illinois Department of Children and Family Services, the Abused and Neglected Child Reporting Act, and the Adoption Act.

"Major medical care" means those medical procedures which are not administered or performed on a routine basis and which involve hospitalization, surgery, or use of anesthesia. These procedures include, but are not limited to, tonsillectomies, appendectomies, provision of blood transfusions, psychiatric hospitalization, use of life support systems, and organ transplants.

"Medical treatment or procedure" means any medical or surgical procedure which is intended to alleviate, ameliorate, prevent or correct physical illness, injury, disability, or disfigurement. The term does not include psychological or psychiatric counseling, therapy, or treatment.

"Ordinary medical care" means those medical procedures which are administered or performed on a routine basis and which do not involve hospitalization, surgery, or use of anesthesia and include, but are not limited to inoculations, physical examinations, and remedial treatment for minor illnesses and injuries.

(Source: Amended at 9 Ill. Reg. 13947, effective September 16, 1985)

Section 327.3 Acceptance of Children

- a) When the Guardianship Administrator is appointed as guardian of the person or the child's custodian in Juvenile Court proceedings on behalf of children served by the Department, the following distinctions apply:
 - 1) The Guardianship Administrator is appointed as guardian of the person or legal custodian of a dependent or neglected child or a minor under age 13 years in need of other supervision or a delinquent child under 13.

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- 2) The Guardianship Administrator may, at the Department's discretion except for those children also adjudicated neglected or dependent, be appointed as legal custodian or guardian of a minor in need of other supervision or of a delinquent child over the age of 13 years.
- b) The Guardianship Administrator is designated by the Department as guardian to accept a child for the purpose of adoption on surrender by the parent(s) of their parental rights. Acceptance shall be given on a form furnished by the Department in accordance with The Adoption Act.
- c) The Guardianship Administrator is the designated custodian of children accepted by the Department on the basis of voluntary placement agreements made between the Department and parents, guardians, or custodians.
- d) The Guardianship Administrator shall be the designated custodian of children served by the Department whose parents, guardian or custodian cannot be located or of children taken in temporary protective custody until proper court proceedings are commenced.

Section 327.4 Duties of the Guardianship Administrator

The duties of the Guardianship Administrator or those with delegated signatory authority include, but are not limited to:

- a) Consenting to the adoption of minors when the court decree provides for such consent, or when children have been surrendered to the Department by parents or caretakers or when all applicable parental rights have been terminated;
- b) Making important decisions in conjunction with wards, and parents when possible, such as consents to marriage, to enlistment in the armed forces, to major medical, surgical and psychiatric treatment, and to travel and visitations within limitations directed by court order;
- c) Representing or arranging for qualified representation of wards in all litigations to which they are parties or which affect them;
- d) Expediting the receipt of all possible benefits due children for whom the Department has legal responsibility including insurance, veteran's benefits, social security, and damages due to the negligence or misconduct of others; and
- e) Acting in other ways as may be indicated in order to assure a permanent, secure and nurturing living arrangement for each child the Department serves through the preservation or reunification of families or the creation of new legal families, or in order to assure continuity of care in long term treatment programs, as needed by the child.

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Section 327.5 Medical Consents

- a) Principles of Consultation and Consent
 - 1) Consent of the custodian or guardian is not required by statute for all persons aged 18 or older, for females who are pregnant, or for the dissemination to children over age 12 of information about and treatment for venereal disease, drug or alcohol abuse, and for birth control information.
 - 2) In all cases the minor shall be consulted by casework staff regarding the nature of the proposed medical procedures to the extent that the child's age and understanding of the situation will allow. Parents shall be consulted regarding medical procedures affecting their children as provided by this rule. Where the Department retains the right of final determination, it may consent to any medical treatment regardless of objections raised by the minor or by his or her parent(s). Should such objection be made, the minor and his/her parent(s) shall be advised of their right to seek remedy under the Juvenile Court System. If the proposed medical treatment is elective in nature, reasonable time shall be afforded to obtain such remedy.
 - 3) When medical consents are to be given for minors in the custody of or under the guardianship of the Department, such consents shall be given only the Guardianship Administrator, or designee, or under special circumstances noted below, by the parent of the minor. Under no circumstances shall any other employee of the Department give such consents.
 - 4) Upon request from a licensed physician or medical facility for consent to perform any medical procedure, the Guardianship Administrator or designee shall obtain all relevant facts and the reasons for the request. In every instance involving a major or elective procedure, except in an emergency, consultation with physicians either employed by the Department or utilized by it shall be undertaken before any consent is given. Such consent shall be documented. Additional requirements for exceptional cases are stated in paragraph 5 below and in (c) (1) below.
 - 5) In every instance, before consent is given for proposed elective surgical or medical procedure involving the sexual and/or reproductive organs of a minor, the completion of which may or will affect his/her ability to sire, conceive, or bear children, advice shall be obtained from at least two physicians who have specialized training, knowledge or experience in this field and who are not professionally associated with the recommending physician. Records of the consultants shall be signed by the consultants and kept on file by the Department.
- b) Specific Circumstances
 - 1) Consent to medical treatment for any child under the age of 18 who is under the guardianship of the Department, or for whom the Department holds temporary custody (pursuant to a court to consent to major medical procedures, or has been surrendered to the Department for adoption by one or both parents shall be given under the following conditions:

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- A) Consent to ordinary, elective or emergency treatment shall be given by the Guardianship Administrator or designee in all cases involving major or elective procedures and the parent(s) or responsible relative (as the case may be) shall be consulted and advised by the casework staff of the Department or of an agency providing care and service to the child, as to the nature and extent of any medical procedure recommended except when the parental rights have been terminated by court order or surrender, or when immediate action is warranted or required.
 - B) If upon reasonable, diligent effort no parent or relative can be located, any needed medical treatment shall not be delayed.
 - C) When emergency attention is required and delay will endanger the health or well-being of the child, treatment shall be given and the notification of parent(s) or relative shall be made as soon thereafter as possible.
- 2) Consent to medical treatment for any child under the age of 18 for whom the Department holds temporary custody (pursuant to an order of a court) but has not been given the authority to consent to major medical procedures; or consent to medical treatment for a child placed in the care of the Department through abandonment, police intervention or emergency protective custody under the Abused and Neglected Child Reporting Act, (Ill. Rev. Stat., ch. 23, par. 2055).
- A) Consent for ordinary medical treatment shall be given only by the Guardianship Administrator or designee.
 - B) Consent for major medical treatment or surgical procedures shall be given by the minor's parent or legal guardian.
 - C) If the treatment is of an emergency nature and the parent or guardian is unavailable or is unwilling to provide the consent, the physician or hospital should be asked to proceed under Chapter 111, Section 4503, Illinois Revised Statutes, which allows treatment to be given to minors without consent.
 - D) If the treatment is of an elective nature and the parent or guardian is unavailable or is unwilling to provide the consent, immediate relief should be sought in the form of a request that the court appoint a custodian with the authority to consent to major medical treatment.

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- E) When emergency treatment has been given without the consent of a parent or guardian, the parent or guardian shall be advised as soon thereafter as possible, by casework staff of the Department or of an agency providing care and service to the child, as to the nature and extent of any medical service provided.
- 3) Consent to medical treatment for any child under the age of 18 who is in the custody of the Department pursuant to a voluntary placement agreement:
- A) Any request for consent to any type of medical treatment shall be referred to the parent(s) or guardian of the minor.
 - B) If the parent(s) or guardian is not available, the request shall be forwarded to the Guardianship Administrator or designee.
 - C) When treatment has been given without consent of the parent(s) or guardian, the parent(s) or guardian shall be advised as soon thereafter as possible by casework staff of the Department or of an agency providing care and service to the child, as to the nature and extent of any medical service provided.
 - D) If parents are consistently unavailable to provide consents for medical treatment of their children, staff may consider filing a petition with the Court for the appointment of a custodian with the authority to consent to major medical treatment.
- c) Use of Drugs
- 1) No experimental use of a drug may be made, and no drug of an experimental nature may be given or administered in any form or manner to any minor under the care of the Department as provided for in part 432, Research Involving Children and Families, except when the Department has power to consent to major medical treatment and procedures and when, in the opinion of the treating physician and of at least two medical experts not professionally associated with the recommending physician, the administration of an experimental drug would represent the best possible chance of saving the minor's life or of achieving the remission of a progressive, crippling, disfiguring, or potentially fatal disease. This provision is at all times subject to court review should objection be made to the administration of any drug as described herein (see (a) (2) above).
 - 2) Records of the consultation should be signed by the consultants and kept on file by the Department.