

4.3 Medical Treatment Order

Effective 12/1/82

PURPOSE

In some instances, because of personal belief or conviction, a parent may decline to consent for medical treatment for his child. This policy describes the due process steps to be taken when a medical treatment provider determines such care is necessary to treat or prevent immediate risk of serious injury.

LEGAL BASE

1. Title 22, MRSA §4010 declares that a child shall not be considered to be abused or neglected, in jeopardy of health or welfare, or in danger of serious harm solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization except under Title 22, MRSA, Section 4071. When medical treatment is authorized under Section 4071, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the child or his parents.
2. Under Title 22, MRSA, §4071, a petition for a medical treatment order may be brought by:
 - a. The Department, or
 - b. A physician, or
 - c. A chief medical administrator of a hospital
3. The petition [Form BRDCP-030] shall contain:
 - a. Identifying information regarding the child, petitioner, parents and custodians
 - b. A summary of the medical diagnosis and treatment alternatives
 - c. A request for a specific treatment order
 - d. A statement that attempts to notify and secure consent from the custodians have been unsuccessful, either because they cannot be located or they have refused to consent.
4. Notice to the parents and custodians by reasonable means shall be attempted by the petitioner to inform them of his intent to request the order, and of the time and place he will make the request. [See Reasonable Steps to Inform Parties of Intent or Action, Section XI, Subsection B], unless the petitioner believes [based on information from a medical treatment provider] that the child would suffer increased serious injury during the time needed to notify them.
5. The court may order medical treatment necessary to treat or prevent an immediate risk of serious injury. [See Definitions, Section IV, Subsection A]
6. If a hearing has not been held prior to issuing of the order, a hearing shall be held within 10 days, unless all parties agree to a later date.
7. Parents and custodians must be served with the petition and notice of hearing, if a hearing was not held prior to the issuance of the order.
 - a. By the judge or court clerk, if present when the order is issued, or

- b. In accordance with District Court Civil Orders [see Service of the Petition and Service of the Preliminary Protection Order, Section XI, Subsections J and K], except that service by publication shall be complete 5 days after a single publication, or
- c. Another manner ordered by the court [e.g., in-hand by the hospital or the worker].
- 8. Parents and custodians are entitled to legal counsel at the hearing on the order [see Legal Representation, Section XI, Subsection M].
- 9. Upon hearing, the court may continue the order if it determines, by a preponderance of the evidence, that the medical treatment order is necessary to treat or prevent the immediate risk of serious injury to the child.

PRACTICE STANDARDS

1. Prior to filing a petition for a medical treatment order there must be:
 - a. A diagnosis by a physician that medical treatment is necessary to treat or prevent an immediate risk of serious injury.
 - (1) A layman's impression (e.g., Department of Human Services Social Worker) that medical treatment may be necessary is not sufficient grounds for filing a petition for a medical treatment order.
 - (2) On occasion there may be more than one professional opinion and/or a suggested treatment may be non-standard. If the Department is already involved or is requested to be involved in such a case, the worker will request a second and/or corroborating medical opinion.
 - (3) It is not required that all medical professionals be in agreement prior to a petition being filed. The court will determine what treatment, if any, to order, based on the evidence presented.
 - b. Information/evidence that parents or custodians object or would object to the treatment.
2. The Department will encourage the attending physician, the hospital currently treating the child, or hospital having knowledge of the child's condition, to petition when the problem relates solely to a medical treatment consent issue.
 - a. The worker will offer advice and assistance to the petitioner
 - b. Forms will be provided
3. Parents and custodians unavailable:
 - a. Consent will be given by the Department under the Short Term Emergency Services authorization (Section IV, Subsection H) when:
 - (1) The treatment is prescribed by a physician,
 - (2) The treatment prescribed is standard for the diagnosed condition,
 - (3) The treatment needed is of an emergency nature to treat or prevent serious harm or injury,

- (4) Other requirements for Short Term Emergency Services are met,, and
- (5) The worker has no reasonable cause to believe that parents or custodians would object to the treatment on religious or other ideological grounds (i.e., from information from physician or family or Departmental child welfare records).
- b. Consent will be given if the child is:
 - (1) In the custody of the Department, or
 - (2) In the voluntary care of the Department, and
 - (a) The treatment prescribed is a generally accepted treatment for the diagnosed condition, and
 - (b) The worker has no reasonable cause to believe that parents or custodians would object, and
 - (c) Parents or custodians are not available to consent.
- 4. The worker will petition for a Medical Treatment Order when:
 - a. A medical professional has indicated that the lack of treatment may result in immediate risk of serious injury,
 - b. Medical professionals decline to petition,
 - c. The worker has reasonable cause to believe that parents or custodians object or would object to the treatment, and
 - d. Refusal to consent to medical treatment is the only issue (i.e., the child is not abused or neglected. If jeopardy were present, a Child Protection Order would be sought. [See Petitioning for a Protective Order, Section IV, Subsection F].)
- 5. Contact Regional Program Manager and designated Assistant Attorney General if at all possible.
- 6. Informing parents and custodians:
 - a. Attempts will be made to notify parents of the intent to petition (see Reasonable Steps to Inform Parties of Intent or Action, Section XI, Subsection B).
 - b. If located and informed, the parents and custodians will be encouraged to be present when the worker presents the petition to the court.
- 7. Summary of the medical diagnosis and treatment alternatives will consist of documentation (e.g., affidavits or copies of records) regarding:
 - a. The medical diagnosis as stated by the attending physician(s).
 - b. Treatment alternatives and probable consequences as stated by the attending physician(s).

8. Affidavit(s) by the worker and/or other person(s) regarding efforts to secure consent and/or reasons/statements made by parents or custodians refusing to consent, will be attached to the petition.
9. Supporting evidence:
 - a. The worker will request that an attending physician accompany him to present evidence at the time of filing.
 - b. If the physician cannot be present the worker will require written documentation from the attending physician or hospital.
 - c. If documentation will not be released, contact Assistant Attorney General for subpoena. (Investigatory subpoenas can be used only for investigation of suspected abuse or neglect or subsequent child protection proceedings, and not for a Medical Treatment Order. See Investigatory Subpoenas, Section XI, Subsection P.)
10. The request for appointment of a guardian ad litem is in the petition (see Legal Representation, Section XI, Subsection M).
11. Informing persons of contents of Medical Treatment Order (Form BRDCP-031) and hearing date.
 - a. The worker will immediately inform the medical provider.
 - b. If the medical provider requires a copy of the order before proceeding with the medical treatment, the worker will make arrangements to get a copy to the provider.
 - c. The worker will make attempts to inform parents and custodians.
12. Service of the petition and order will be as ordered by the court (see Legal Base, 7. above).
13. Hearing on the order:
 - a. Evidence will be presented as described in "Supporting Evidence", 9. above.
 - b. If subpoenas are needed for further investigation or for witnesses, contact Assistant Attorney General (see Courts Subpoenas/Witnesses, Section XI, Subsection O).

PROCEDURES

1. Established information system procedures will be followed for case opening and closing.
2. A case record will be established.
3. Legal documents will be routed as in Chapter 9.