110 CMR 11.00: MEDICAL AUTHORIZATIONS

Section

11.01: Introduction

To determine who can consent to medical care, the first determination is whether an emergency exists as defined in 110 CMR 11.03 and 11.14. If it is an emergency, no one's consent is required. If there is no emergency, the question is whether the treatment is routine as defined in 110 CMR 11.04 or extraordinary as identified in 110 CMR 11.11, 11.12, 11.13, 11.14 and 11.15. If the particular treatment is not identified specifically in 110 CMR 11.00, it is necessary to weigh the factors outlined in 110 CMR 11.17 to determine whether the contemplated treatment is extraordinary. If it is not extraordinary, it is routine. There is no other possibility.

If the treatment is routine, the Department may consent. In the case of treatment for drug dependency, pregnancy (except abortion and sterilization), family planning, and treatment for a venereal disease or a disease dangerous to the public health, the consent of the minor is sufficient. If the treatment is extraordinary the Department may never consent, but must obtain parental consent for children in the care of the Department and prior judicial approval for wards and children in the custody of the Department. The terms "emergency", "routine", and "extraordinary" medical treatment are extensively defined in 110 CMR 11.00 and only those definitions apply. Neither common parlance nor medical terminology may be used in their place.

11.02: Medical Authorization Definitions

In the Custody of the Department: means a child placed in the Department's custody through court order or through adoption surrender. For purposes of 110 CMR 11.00 only, this phrase shall also include the period occasioned by an emergency removal pursuant to M.G.L. c. 119, § 51B between removal and appearance in Court on the next available court date.

11.02: continued

In the Care of the Department: means a child receiving services from the Department pursuant to a Voluntary Placement Agreement. For purposes of 110 CMR 11.00 only, this phrase shall also include the involvement of the Department after the issuance of a mittimus which commits a CHINS child to the custody of the Department, pursuant to a CHINS proceeding. Although the Department has custody of CHINS children and therefore has the power to determine the child's medical care, for purposes of 110 CMR 11.00, the Department shall be deemed to have delegated back to the parents the power to determine the CHINS child's extraordinary medical care.

11:03: Emergency Medical Care

(1) "Medical emergency" means any immediately life threatening condition and shall include but is not limited to the following conditions.

(a) severe, profuse bleeding
(b) choking, blocked airway
(c) unconsciousness
(d) cardiac arrest
(e) cardio-vascular accident
(f) any fracture
(g) extensive burns
(h) severe cuts
(i) other similar severe injury
(j) other sudden signs of serious physical illness
(k) any condition where delay in treatment will endanger the life, limb or mental well being of the patient. See M.G.L. c. 112, § 12F.

(2) Possibility that a disease may deteriorate to an irreversible condition at an uncertain but relatively distant date is not an emergency. See In the Matter of Guardianship of Richard Roe, III, 421 N.E.2d 40, 55; 383 Mass. 415 (1981). In determining whether a medical emergency exists the relevant time period to be examined begins when the claimed emergency arises, and ends when the individual who seeks to act in the emergency could, with reasonable diligence, obtain parental consent or judicial review, as applicable.

(3) Consent. When there is a medical emergency, no one's consent is required in order to allow a child to receive necessary medical care. See M.G.L. c. 112, § 12F.

11.04: Routine Medical Care

(1) "Routine medical care" shall include but is not limited to the following:

(a) Allergy Shots.
(b) Blood Pressure Test. See 106 CMR 421.445(J).
(c) Comprehensive Physical Examination -- documenting the finding of an unclothed physical examination including a complete system review pertinent to the age of the child, fundoscopic examination of the eyes for children over five years of age, and observation of the teeth and gums for children three years of age or older. See 106 CMR 421.445(D).
(d) Dental care.
(e) Developmental Assessment -- the child's current levels of functioning in the below-listed areas, as appropriate to the child's age. See 106 CMR 421.445(F).

1. gross motor development, including strength, balance, and locomotion
2. fine motor development, including eye-hand coordination
3. language development, including expression, comprehensive and articulation
4. self-help and self-care skills
5. social interaction and emotional development
6. cognitive skills, including problem-solving and reasoning abilities.

11.04: continued

(f) Diseases Dangerous to the Public Health, Treatment of. See M.G.L. c. 112, § 12F and 105 CMR 300.100.
(g) Drug Dependency Treatment. See M.G.L. c. 112, § 12E.
(h) Family Planning Services. See 106 CMR 421.401 et seq.
(i) Fractures, Treatment of
(j) Hearing Test. See 106 CMR 421.445(K).
(k) Immunization - against diphtheria, pertussis, tetanus, measles, poliomyelitis, mumps, rubella and such other communicable diseases as may be specified from time to time by the Department of Public Health. See M.G.L. c. 76, § 15 and 105 CMR 220.100.
(l) Laboratory Tests and Special Medical Studies-when determined by the examining physician to be necessary.
(m) Lead Poisoning Test. See 106 CMR 421.445(P).
(n) Nutritional Status Assessment -- the evaluation of the child's nutritional health in light of dietary practice and the entire health assessment (that is, history, physical examination, height and weight measurements, and the laboratory tests) and documentation of any nutritional disturbance or dysfunction. See 106 CMR 421.445(G).
(o) Pelvic Examination. See 106 CMR 421.445(O).
(p) Pregnancy Treatment - except abortion or sterilization. See M.G.L. c. 112, § 12F.
(q) Preventive Health Services.
(r) Psychiatric assessment, evaluation, or treatment on out-patient basis or up to 90 days on in-patient basis.
(s) Treatment - commonly prescribed for a specific physical illness, which treatment does not pose risks of permanent serious side effects or risk of death, See Custody of a Minor, 375 Mass. 733, 379 N.E.2d 1053, 1064 (1978) or is determined not to be extraordinary medical treatment by using the analysis outlined in 110 CMR 11.00.
(t) Tubercular Skin Test or Chest X-ray.
(u) Venereal Disease Treatment. See M.G.L. c. 112. § 12F; 105 CMR 300.140.
(v) Vision Test. See 106 CMR 421.445(L).

(2) Consent. The Department may consent to routine medical care for a child in the care of the Department or a child in the custody of the Department or a child who is a ward of the Department.

(3) Parent's Religious Beliefs Regarding Routine Medical Treatment. If parents refuse to sign a standard Voluntary Placement Agreement because they refuse to delegate to the Department the power to consent to routine medical treatment for their child on the basis that such routine medical treatment conflicts with the parents' sincere religious beliefs, the Department shall elect one of the following actions:

(a) Amend the standard Voluntary Placement Agreement by adding the following paragraph:

"Whereas the undersigned parents hold sincere religious beliefs opposed to all medical treatment, the Department shall have the right to approve only medical, psychological and dental care, testing or studies for the child relative to:
1. drug dependency;
2. diseases dangerous to the public health;
3. venereal diseases;
4. emergency medical treatment; and
5. routine physical examination and laboratory test."

(b) Determine whether the parents' refusal to delegate to the Department the power to consent to the medical treatment constitutes medical neglect, and if so, institute appropriate court action on that basis.

11.05: Family Planning Services

(1) "Family Planning Services" means medical, educational and social services, excluding abortion and sterilization, which enable individuals voluntarily to limit family size or plan spacing of children. Family planning services include the below-listed services. See 106 CMR 269.030(A)(B) and 106 CMR 421.412.

(a) Information and referral (including outreach & follow-up)
(b) Individual and group counseling
(c) A physical examination
1. for a female, includes thyroid, breast, heart, abdominal, speculum, pelvic, and rectal examinations, and measurements of height, weight and blood pressure;
2. for a male, includes thyroid, heart, genital, abdominal, and rectal examinations, and measurements of height, weight and blood pressure. See 106 CMR 421.412(2).
(d) A pap smear for females. See 106 CMR 421.412(3).
(e) Any laboratory test indicated by the child's history or examination. See 106 CMR 421.412(4).
(f) A medically approved method of contraception. See 106 CMR 421.427(5).
(g) Medical examinations, consultations, laboratory tests and contraceptive services rendered by a licensed physician
(h) Medical treatment for related conditions, such as venereal diseases or vaginal infections
(i) Prescriptions and medical items related to family planning services including drugs, supplies and devices
(j) Clinical follow-up

(2) Provision of information.

(a) Department staff shall inform a child in the care or custody of the Department, or a child who is a ward of the Department, about family planning services available to sexually active minors if such child requests this information or if in the judgment of Department staff such child has need for this information. See 106 CMR 421.401 et seq.
(b) Department staff shall not coerce any child in any way to receive family planning services or to employ any particular method of family planning. A child's use of family planning services must be completely voluntary. See 106 CMR 421.427(B).

(3) Consent by Child. Any child who requests family planning services, whether such child is in the care or custody of the Department, or is a ward of the Department, may consent to his/her own medical and laboratory family planning services. The consent of the Department is not necessary in such cases. (See 106 CMR 421.427(A) which provides that "services must be made available to all recipients who request services, without regard to...age...".)

(4) Consent by Department or Parent. If the child consents to family planning services but the medical provider insists on parental or Department consent, the Department may consent. If the child is not able to consent, the Department may consent.

11.06: Pregnancy

(1) Consent by Child. A child who is pregnant or believes herself to be pregnant may give consent to her own medical and dental care (except abortion or sterilization). The consent of the Department is not necessary to authorize medical or dental care for any such child in the care or custody of the Department, or any such ward of the Department. See M.G.L. c. 112, § 12F.

(2) Consent by Department or Parent. If a medical provider refuses to treat a child who is pregnant or believes herself to be pregnant without parental or Department consent, or if such child refuses to consent or is not able to consent to medical or dental care, the Department may consent (except to abortion or sterilization).

11.07: Abortion

(1) Consent by Child in Care of Department.

(a) If a minor in the care of the Department is pregnant both the minor and both of her parents must consent to an abortion, or she must obtain prior judicial approval pursuant to M.G.L. c. 112, § 12S.
(b) If one of the pregnant minor's parents has died or is unavailable to give consent within a reasonable time, consent of the remaining parent shall be sufficient. See M.G.L. c. 112, § 12S.
(c) If both parents have died or are otherwise unavailable to the physician within a reasonable time, and in a reasonable manner, consent of the minor's guardian or guardians shall be sufficient. See M.G.L. c. 112, § 12S.
(d) If the pregnant minor's parents are divorced, consent of the parent having custody shall be sufficient. See M.G.L. c. 112, § 12S.
(e) If one or both of the pregnant minor's parents or guardians refuse to consent to the performance of an abortion or if she elects not to seek the consent of one or both of her parents or guardians, the minor must seek authorization for an abortion from a judge of the Superior Court, pursuant to M.G.L. c. 112, § 12S.

(2) Consent by Child in Custody of Department.

(a) If a minor, in the custody of the Department, is pregnant and wants to have an abortion, Department staff shall not consent to the abortion. Such a minor must obtain prior judicial approval pursuant to M.G.L. c. 112, § 12S.
(b) If the minor requests assistance from the Department in seeking court authorization for an abortion, or if in the judgment of the Department's social work staff such minor has need for this information, the Department social work and legal staff shall provide her with the necessary information on how to go to court to file a petition or motion under the provisions of M.G.L. c. 112, § 12S. However, Department attorneys shall not represent pregnant minors in their petition or motion pursuant to M.G.L. c. 112, § 12S.

(3) Consent By Department As Guardian. If a minor is pregnant and wants an abortion, and both her parents have died or are otherwise unavailable to the physician within a reasonable time and in a reasonable manner, and if the Department has been appointed guardian of the minor by a Probate Court, the Department shall follow the requirements and procedures of M.G.L.c. 112, § 12S.

11.08: Drug Dependency

(1) Consent. A child 12 years of age or older who is found to be drug dependent by two or more physicians may give his/her consent to the furnishing of hospital and medical care related to the diagnosis or treatment of such drug dependency. The consent of the Department is not necessary to authorize hospital or medical care related to drug dependency of any child over 12 years of age in the Department's care or custody, or any child for whom the Department has been appointed guardian. See M.G.L. c. 112, § 12E.

(2) Consent By Department Or Parent. If a medical provider refuses to treat a child without parental or Department consent, or if a child refuses to consent or is not able to consent to medical or hospital care related to the diagnosis or treatment of drug dependency, the Department may consent; provided that the Department shall not consent to the administration of antipsychotic medication or shock therapy or any other extraordinary medical treatment for diagnosis or treatment of drug dependency.

11.09: Diseases Dangerous to the Public Health

(1) Diseases Dangerous to the Public Health means the following. See 105 CMR 300.100; 105 CMR 310.020.

11.09: continued

(a) Actinomycosis
(b) AIDS (Acquired Immune Deficiency Syndrome)
(c) Animal Bite
(d) Anthrax
(e) Brucellosis (Undulant Fever)
(f) Chickenpox (Varicella)
(g) Cholera
(h) Diarrhea of the Newborn
(i) Diphtheria
(j) Dysentery, Amebic
(k) Dysentery, Bacillary (Shigellosis)
(l) Encephalitis (specify if known)
(m) Food Poisoning by:
    1. Botulism
    2. Mushrooms and other poisonous vegetable and animal products
    3. Mineral or organic poisons such as arsenic, lead, etc.
    4. Staphylococcal
(n) German Measles (Rubella)
(o) Glanders
(p) Hepatitis, Viral (includes Infectious and Serum Hepatitis)
(q) Impetigo of the Newborn
(r) Leprosy
(s) Leptospirosis (including Weil's Disease)
(t) Lymphocytic Choriomeningitis
(u) Malaria
(v) Measles (Rubeola)
(w) Meningitis (B. Influenzal, meningococcal, pneumococcal, streptococcal forms)
(x) Mumps
(y) Ophthalmia Neonatorum
(z) Plague
(aa) Poliomyelitis
(bb) Psittacosis
(cc) Rabies - Human
(dd) Rickettsialpox
(ee) Rocky Mountain Spotted Fever
(ff) Salmonellosis (except Typhi and Paratyphi)
(gg) Salmonellosis: Typhi and Paratyphi (Typhoid and Paratyphoid Fevers)
(hh) Smallpox (Variola)
(ii) Smallpox Vaccination Reactions -- Generalized Vaccinia, Eczema Vaccinatum
(jj) Streptococcal Infections (including Erysipelas Scarlet Fever, Streptococcal Sore Throat, etc.)
(kk) Tetanus
(ll) Trachoma
(mm) Trichinosis
(nn) Tuberculosis
(oo) Tularemia
(pp) Typhus Fever (including Brills' Disease)
(qq) Whooping Cough (pertussis)
(rr) Yellow Fever

(2) Consent by Child. If any ward or child in the care or custody of the Department reasonably believes herself or himself to be suffering from or to have come in contact with any disease dangerous to the public health, such child may consent to his or her own medical care or dental care related to the diagnosis or treatment of such disease. The consent of the Department is not necessary to authorize medical or dental care related to the diagnosis or treatment of diseases dangerous to the public health for any ward or child in the Department's care or custody. See M.G.L. c. 112, § 12F.

11.09: continued

(3) Consent by Department or Parent. If a medical provider refuses to treat the child without parental or Department consent, or if a child refuses to consent or is not able to consent to medical or dental care related to the diagnosis or treatment of a disease dangerous to the public health, the Department may consent.

(4) AIDS. The Department shall establish and consult with an AIDS Advisory Board, comprised of Department personnel, Department of Public Health personnel, a physician consultant, a legal consultant, a foster parent representative, in making AIDS-related decisions.

COMMENTARY

Children with AIDS are to be treated as any other children with serious diseases. However, the Department strongly emphasizes the importance of confidentiality for these children and families. Additionally, the Department supports, as policy, the "case by case" review of these infants and children, due to the constantly emerging knowledge about HIV infection from the medical and scientific communities.

To achieve this goal, the Department has established a Central AIDS Review Board comprised of experts in the field of AIDS and representatives of DSS who will review cases involving testing, placement and other AIDS issues of any child in the care or custody of the Department. The Board will evaluate the information and make recommendations to the Deputy Commissioner, who will make final decisions involving testing and placement of these children.

11.10: Venereal Disease

(1) "Venereal diseases" means the following. See 105 CMR 300.100; 105 CMR 300.140; 105 CMR 340.100.
- (a) Chancroid
- (b) Gonorrhea
- (c) Granuloma Inguinale
- (d) Lymphogranuloma Venereum
- (e) Syphilis

(2) Consent by Child. If any ward of the Department or child in the care or custody of the Department reasonably believes himself or herself to be suffering from or to have come in contact with any venereal disease, such child may consent to his or her own medical care or dental care related to the diagnosis or treatment of such venereal disease. The consent of the Department is not necessary to authorize medical or dental care related to the diagnosis or treatment of venereal disease for any ward or child in DSS care or custody. See M.G.L. c. 112, § 12F.

(3) Consent by Department or Parent. If a medical provider refuses to treat the child without parental or Department consent, or if a child refuses to consent or is not able to consent to medical or dental care related to the diagnosis or treatment of venereal diseases, the Department may consent.

11.11: Sterilization

No Consent by Department. Department staff shall not consent to the sterilization of any ward or child in its care or in its custody. Prior judicial approval is necessary under all circumstances for the performance of a sterilization upon any child who is a ward of the Department, or who is in the care or custody of the Department. See Matter of Moe, 385 Mass. 555, 559, 432 N.E.2d 712 (1982); M.G.L. c. 112, § 12W.

11.12: No Code Orders

(1) "No code" order means a medical order regarding a terminally ill patient directing a hospital and its staff not to use heroic medical efforts in the event of cardiac or respiratory failure. Heroic medical efforts include invasive and traumatic life-saving techniques such as intracardial medication, intracardial massage and electric shock treatment. No code orders include "do not resuscitate" orders or orders stated in different language attempting to accomplish substantially the same result as a "no code" order. See Custody of a Minor, 385 Mass. 697, 434 N.E.2d 601 (1982).

(2) No Consent by Department. Department staff shall not consent to the entry of a "no code" order for any ward or child in its care or custody. See Custody of a Minor, 434 N.E.2d 601 (1982).

(3) Consent by Parents.

(a) With respect to a child who is in the care of the Department, the right to consent or to refuse to consent to the entry of a "no code" order shall remain with the child's parents, unless otherwise limited by court order. If the Department has reason to believe that the parents are guilty of medical neglect by their consent to a "no code" order, the Department shall seek custody through a court proceeding which alleges medical neglect.

(b) With respect to a child who is a ward of the Department or is in Department custody, when a medical provider seeks the Department's consent to the entry of a "no code" order, the Department shall not consent unless it seeks and receives prior judicial approval for the entry of a "no code" order, even if the child's biological parents have consented to the entry of such order. See Custody of a Minor, 434 N.E.2d 601, 608 (1982). When seeking prior judicial approval, the Department shall file a Motion for Appointment of a Guardian ad Litem to investigate whether such order should enter.

11.13: Life-prolonging Medical Treatment

(1) "Life-prolonging medical treatment", as distinguished from life-saving treatment, means intrusive medical treatment where there is no prospect of recovery. In the Matter of Earle A. Spring, 380 Mass. 629, 405 N.E.2d 115, 120 (1980). Recovery does not mean the ability to remain alive but rather life without intolerable suffering. Saikewicz, 373 Mass. 728, 370 N.E.2d 417 (1977).

(2) No Consent by Department. Department staff shall not consent to the giving or withholding of life-prolonging medical treatment for any child who is a ward of the Department or for any child in its care or custody. See Spring, supra; Superintendent of Belchertown State School v. Saikewicz, supra.

(3) Consent by Parents or Court.

(a) With respect to a child who is in the care of the Department, the right to consent or to refuse to consent to the giving or withholding of life-prolonging medical treatment shall remain with the child's parents unless otherwise limited by statute or court order. If the Department has reason to believe that the parents are guilty of medical neglect by their consent to giving or withholding of life-prolonging medical treatment, the Department shall seek custody through a court proceeding which alleges medical neglect

(b) With respect to a child who is a ward of the Department or is in the Department's custody, when a medical provider seeks the Department's consent to an order giving or withholding life-prolonging medical treatment, the Department shall seek prior judicial approval for the giving or withholding of life-prolonging medical treatment, even if the child's biological parents have consented to the entry of such order. When seeking prior judicial approval, the Department shall file a Motion for Appointment of a Guardian ad Litem to investigate whether such order should enter for a ward of the Department or child in the Department's custody.

11.14: Antipsychotic Drugs

(1) "Antipsychotic drugs" shall mean drugs which are used in treating psychoses. Antipsychotic drugs include the below-listed drugs by whatever official name, common or usual name, chemical name, or brand name they may be designated. All isomers, esters, ethers, salts of, or any combination of, drugs listed below are deemed to be antipsychotic drugs. Such antipsychotic drugs shall include, but shall not be limited to:

Generic Name	Trade Name
1 Acetophenazine	Tindal
2 Butaperazine	Repoise
3 Carphenazine	Proketazine
4 Chlorpromazine	Thorazine
5 Chlorprothizene	Taractan
6 Fluphenazine	Prolixin
7 Haloperidol	Haldol
8 Loxapine	Loxitane
9 Mesoridazine	Serentil
10 Molindone	Moban
11 Perphenazine	Trilafon
12 Piperacetezine	Quide
13 Prochlorperazine	Compazine
14 Promazine	Sparine
15 Thioridazine	Mellaril
16 Thiothixene	Navane
17 Trifluoperazine	Stelazine
18 Triflupromazine	Vesprin

(2) No Consent by Department. The Department shall not consent to the administration of antipsychotic medication for any individual, but shall in all cases seek parental consent for children in Department care, or prior judicial approval for children in Department custody and wards of the Department.

(3) Consent by Parents for Children in Department Care.

(a) When any individual, organization, facility or medical provider seeks to medicate with antipsychotic drugs a child, who is in the care of the Department, Department staff shall not consent to such medication nor shall the Department seek prior judicial approval for administration of such medication. The decision of whether to consent to such medication shall remain with the parents.

(b) If the Department has reason to believe that the parents are guilty of medical neglect by their consent to medicate with antipsychotic drugs or by their refusal to consent to medicate with antipsychotic drugs, the Department shall seek custody of the child through a court proceeding which alleges medical neglect.

(c) The 110 CMR 11.14(3)(a) and (b) apply whether or not the child consents to the administration of antipsychotic medication.

(4) Judicial Approval for Wards and Children in Department Custody.

(a) When any individual, organization, facility, or medical provider seeks the Department's consent to medicate with antipsychotic drugs a child, who is a ward of the Department or who is in Department custody, the Department shall seek prior judicial approval for administration of such drugs even if the child's biological parents have consented to the medication. See Rogers v. Commissioner of the Department of Mental Health, 390 Mass. 489 (1983); M.G.L. c. 210, § 6.

11.14: continued

(b) Where antipsychotic medications have been previously prescribed for a child who is a ward of the Department or who is in the custody of the Department, and that child is currently being treated with antipsychotic drugs without judicial authorization, the Department shall initiate the process for judicial review and application of substituted judgment. Pending judicial review the Department shall not discontinue the prescribed treatment with antipsychotic drugs, because interruption or discontinuance of the treatment might cause severe medical complications and might violate the individual's legal right to treatment.

(c) Neither a ward of the Department who has attained 16 years of age nor a child in the custody of the Department who has attained 16 years of age and who has voluntarily admitted him/herself to a mental health facility, shall have the power to consent to the administration of anti-psychotic drugs. The Department shall seek prior judicial approval for medicating such a child with antipsychotic drugs, even if such child consents to its administration. See M.G.L. c. 201, § 6.

(5) Guardianship for Individuals Over 18 Years of Age.

(a) The Department shall not consent to the administration of antipsychotic drugs to an individual over 18 years of age who is in the care or custody of the Department.

(b) Any individual over 18 years of age who is in the care or custody of the Department, and who is competent to make medical decisions, may consent to the administration of his/her antipsychotic medication.

(c) If the Department believes that an individual over 18 years of age in the care or custody of the Department is not competent to make medical decisions, and failing action by the individual's parents, the Department of Mental Health, or other third person, the Department will file incompetency proceedings under M.G.L. c. 201. If the individual is adjudicated competent, then only such individual may consent to the administration of antipsychotic drugs. If the individual is adjudicated incompetent then the judge will apply a substituted judgment standard to determine whether antipsychotic drugs ought to be administered, and will issue appropriate orders.

(6) Emergency Treatment with Antipsychotic Drugs.

(a) Antipsychotic drugs may be administered for treatment purposes without parental consent or prior judicial approval only in an emergency (even though no threat of violence exists) and only if there is no less intrusive alternative to antipsychotic drugs.

(b) An emergency for purposes of administering antipsychotic drugs for treatment purposes is an unforeseen combination of circumstances or the resulting state that calls for immediate action. See Roe at 42. It includes a situation where doctors, in their professional judgment, determine that the medication is necessary to prevent the immediate, substantial, and irreversible deterioration of a serious mental illness. See Rogers at 511. The possibility that a mental condition might deteriorate into a chronic, irreversible condition at an uncertain but relatively distant date is not an emergency. See Roe at 55.

(c) In situations that fall within the purview of 110 CMR 11.00, no consent by the Department or parents is necessary (since the medical provider may make such determination) and therefore the Department shall not give consent nor seek parental consent.

(d) If a child is medicated with antipsychotic drugs in an emergency situation and the doctors determine that the antipsychotic drugs should continue, then the Department shall follow the procedures for obtaining consent as though no emergency existed. See Rogers at 512.

(7) Use of Antipsychotic Drugs for Restraint.

(a) Antipsychotic drugs shall not be administered as a restraint of any ward or child in the care or custody of the Department when such restraint is for disciplinary reasons or for administrative convenience.

11.14: continued

(b) Antipsychotic drugs may be used for restraint only in cases of emergency, and only if there is no less intrusive alternative to antipsychotic drugs. An emergency for purposes of administering antipsychotic drugs for restraint is the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide. Such emergency cases shall only include situations where there is the occurrence or a substantial risk of serious self-destructive behavior, or the occurrence or a substantial risk of serious physical assault. A substantial risk includes only the serious, imminent threat of bodily harm, where there is present ability to effect such harm. Predictable crises are not within the definition of emergency. Antipsychotic drugs may be administered for restraint only in accordance with the procedures set forth in 104 CMR (Department of Mental Health).

11.15: Electroconvulsive Treatment or ECT (Shock Treatment)

(1) Consent by Child if 16 Years of Age or Older. No person other than the child may consent to ECT if the child is 16 years of age or older and:

(a) is not a patient at a mental health facility; or
(b) is on voluntary admission status or conditional voluntary admission status to a mental health facility.

(2) Consent by Parents for Children in Department Care.

(a) When any individual, organization, facility or medical provider seeks to administer ECT to a child under 16 years of age who is in the care of the Department, the Department shall not consent to such treatment nor shall the Department seek prior judicial approval for administration of such treatment. The decision of whether to consent to ECT shall remain with the parents.
(b) If the Department has reason to believe that the parents are guilty of medical neglect by their consent to ECT or by their refusal to consent to ECT, the Department shall seek custody of the child through a court proceeding which alleges medical neglect.
(c) The 110 CMR 11.15(2)(a) and (b) apply to any child under 16 years of age whether or not the child consents to the administration of ECT.

(3) Judicial Approval for Children in Department Custody.

(a) When any individual, organization, facility or medical provider seeks the Department's consent to administer ECT to a child who is in Department custody, or to a ward of the Department, the Department shall seek prior judicial approval for administration of such treatment, even if the child's biological parents have consented to the ECT.
(b) Where ECT has been previously prescribed for a child in the custody of the Department, and that child is currently being treated with ECT without judicial authorization, the Department shall immediately initiate the process for judicial review and application of substituted judgment Pending judicial review the Department shall not attempt to discontinue the prescribed treatment with ECT, because interruption or discontinuance of the treatment might cause severe medical complications and might violate the child's legal right to treatment.

11.16: Commitment to a Mental Health Facility

(1) Definition.

Mental health facility means a public or private facility for the inpatient care or treatment or diagnosis or evaluation of mentally ill or mentally retarded persons, except for the Bridgewater State Hospital. See M.G.L. c. 123, § 1. Community residential care facilities for children (as defined at 110 CMR 7.120) are not mental health facilities for purposes of 110 CMR 11.00.

11.16: continued

(2) Consent by Child If 16 Years of Age Or Older. Any child who has attained 16 years of age may apply for voluntary admission to a mental health facility. In the case of such an application by the child, no additional consent either from the Department or from parents is necessary. See M.G.L. c. 123, § 10(a).

(3) Consent by Parent. A parent may consent to the admission of his/her child to a mental health facility when:

(a) the child is in the care of the Department and is under 16 years of age; or
(b) the child is in the care of the Department and is between 16 and 18 years of age and does not consent to admission to a mental health facility.

(4) Consent by Department Area or Regional Director. The Department (by an Area or Regional Director only) may consent to the admission of a person:

(a) custody: in the custody of the Department
(b) care: in the care of the Department if that person's parent(s) is unavailable for consultation or if that person's parent(s) after consultation consent or authorize the Department to consent; but the Department may not consent to the admission of a person in the care of the Department if that person's parent(s) after consultation refuse to consent or refuse to authorize the Department to consent
(c) ward: who is a ward of the Department only if the Department as guardian has the specific power to consent to the admission of the ward to a mental health facility for an initial period of time not to exceed a maximum of 90 days.

(5) Judical Review after 90 days. In any case where the Department has consented to the admission of a person to a mental health facility, the Department shall seek judicial review before it consents to an extension of the admission of such person to a mental health facility beyond a period of 90 days.

(6) Antipsychotic Drugs. The determination of who may consent to the administration of antipsychotic drugs to a child shall be made according to 110 CMR 11.14.

11.17: Other Extraordinary Medical Treatment

(1) Recognizing that it is impossible to itemize every extraordinary medical treatment, the Department shall utilize the following factors to determine whether a medical treatment is extraordinary:

(a) Complexity, risk and novelty of the proposed treatment: The more complex the treatment, the greater the risk of death or serious complications, the more experimental the procedure, then the greater the need to determine that the treatment is extraordinary, and to obtain parental consent or to seek judicial approval prior to authorizing treatment. See In the Matter of Guardianship of Richard Roe III, 421 N.E.2d 40, 53 (1981). In the Matter of Spring, 405 N.E.2d 115 (1980). In the Matter of Moe, 432 N.E.2d 712 (1982).
(b) Possible side effects: The more serious and permanent the side effect, the greater the need to determine that the treatment is extraordinary, and to obtain parental consent or to seek judicial approval prior to authorizing treatment. See Superintendent of Belchertown State School v. Saikewicz, 370 N.E.2d 417 (1977). Rogers v. Commissioner of DMH, 390 Mass. 489, 501-502 (1983). In the Matter of Guardianship of Richard Roe III, 421 N.E.2d 40 (1981). Custody of a Minor, 385 Mass. 697, 434 N.E.2d 601 (1982).
(c) Intrusiveness of proposed treatment: The more intrusive the treatment the greater the need to determine that the treatment is extraordinary, and to obtain parental consent or prior judicial approval. See In the Matter of Hier, 18 Mass. App. Ct. 200, 464 N.E.2d 959, (1984). Superintendent of Belchertown State School v. Saikewicz, supra. In The Matter of Moe, supra. In The Matter of Spring, supra.

11.17: continued

(d) Prognosis with and without treatment: The less clear the benefit from the proposed treatment the greater the need for parental consent or prior judicial approval. See Superintendent of Belchertown State School v. Saikewicz, supra; Custody of a Minor, 385 Mass. 697, 434 N.E.2d 601 (1982); In The Matter of Spring, supra.
(e) Clarity of professional opinion: The more divided the medical opinion, the greater the need for parental consent or prior judicial approval. See In The Matter of Spring, supra.
(f) Presence or absence of an emergency: In a medical emergency a physician can act without anyone's consent. See M.G.L. c. 112, § 12F.
(g). Prior judicial involvement: if a court has been involved in past medical decisions, this argues for judicial involvement in any future medical treatment decision, but this is not conclusive. See In The Matter of Guardianship of Richard Roe III, supra at 56.
(h) Conflicting Interests: Where the interests of the decision maker conflict with the interests of the child, there is greater need for obtaining parental consent or prior judicial approval. In the Matter of Guardianship of Richard Roe III, 421 N.E.2d 40 (1981).

(2) No Consent by Department. The Department shall not give its consent to extraordinary medical treatment for any child in the care or custody of the Department. For all such children, the Department shall seek prior judicial approval for any extraordinary medical treatment (unless parental consent is obtained for children in the care of the Department, as set forth at 110 CMR 11.17(3)).

(3) Consent by Parent. With respect to a child in the care of the Department, the right to consent to extraordinary medical treatment shall remain with the parent(s), except to the extent such right has been specifically limited by the legislature or by the rulings of a court or by written agreement between the parents and the Department.

(4) Guardianship. The Department shall not give its consent to extraordinary medical treatment for its ward, except where it is specifically empowered to do so by statute, regulation or case law. In all other cases the Department shall seek prior judicial approval for extraordinary medical treatment.

11.18: Legal Proceedings

(1) Whenever the Department may not consent to a medical procedure, but must seek prior judicial approval for such procedure, the Department shall seek the appointment of a guardian ad them to investigate whether such procedure should be administered, and thereafter report back to the court.

(2) At any subsequent hearing when the court is considering the question of whether such treatment ought to be administered, the Department shall not request that the court authorize the Department to consent to such treatment; but rather the Department shall request that the court, using a substituted judgment standard, make the decision whether to authorize such treatment.

11.19: Autopsy

For children in the care of the Department at the time of their death, the right to consent or refuse to consent to an autopsy belongs to the parent(s). The Department shall not consent to an autopsy for children who die while in the care of the Department, unless the Department, after diligent efforts, is unable to contact the parent(s) to seek their consent, in which case the Department may then consent.

11.19: continued

For wards or children in the custody of the Department at the time of their death, the Department may request and may consent to an autopsy.

11.20: Burial

Burial of wards or children in the care or custody of the Department at the time of their death shall be accomplished by consulting with the parents, in the first instance. If the parents refuse to make burial arrangements or cannot be contacted, the Department shall make and pay for appropriate burial arrangements, consistent with the provisions of M.G.L. c. 119, § 23(H).

11.21: Organ Donation

For children in the care of the Department at the time of their death, the right to consent or refuse to consent to a request for organ donation after the child's death belongs to the parent(s). The Department shall not consent to organ donation by children who die in the care of the Department.

For wards or children in the custody of the Department at the time of their death, the Department shall determine on a case-by-case basis whether to consent to a request for organ donation.

11.22: Confidentiality of Medical Records and Information

(1) Except for cases in litigation (in which case 110 CMR 12.09 shall govern), with respect to the medical records of a child in the care or custody of the Department or a child who is a ward of the Department:

(a) The Department shall not distribute or release medical documents or information contained anywhere in a child's record or case file to any unauthorized person (as defined at 110 CMR 11.22(3)) without the written consent of one of the child's parents or without an order of a court of competent jurisdiction.
(b) The child's parent(s) or attorney or guardian or guardian ad litem shall have access to all medical documents or information contained anywhere in a child's record or case file; unless the person who contributed such information has requested in writing to the Department that the information not be disclosed (for which purpose the mere stamp "Confidential" shall not be sufficient), or unless otherwise provided by statute. The child's parent(s) may also request medical documents regarding their child directly from the hospital or medical provider pursuant to the provisions of the "Patient's Bill of Rights" at M.G.L. c. 111, § 70E.

(2) With respect to the medical records of a child surrendered for adoption to the Department or in the custody of the Department after an adjudication under M.G.L. c. 210, § 3:

(a) The Department shall not distribute or release information in a child's medical record to any unauthorized person without court order.
(b) Unauthorized person for purposes of 110 CMR 11.22(2) shall include the parents of the child.

(3) Unauthorized person for purposes of 110 CMR 11.22(1) and (2) shall include everyone except: the child's physician or any other medical provider, the child's foster parents, the appropriate authorities at a residential facility in which the child is or is intended to be living, the appropriate authorities at any school the child is attending, the child's substitute care provider, the subject child if over 14 years of age, or any other person who the Department determines requires such information to render medical or other professional assistance to the subject child.

11.22: continued

(4) When any ward or child in the care or custody of the Department requests that the Department not notify his or her parents of intended medical treatment, the Department shall determine on a case-by-case basis whether to consent to the child's request, but shall comply with the provisions of M.G.L. c. 112, § 12F.

11.23: Children as Research Subjects

Parents shall retain the right to consent to participation by their child in any medical or psychological research. If the parents consent, the Department shall also consent. If the parents refuse to consent, the child shall not participate. Medical research includes physical examinations, laboratory tests of any kind, and psychological examinations and tests. For children in the custody of the Department pursuant to a surrender for adoption, termination of parental rights, or where parents cannot be located, the Department shall seek prior judicial approval.

11.24: Consent Standard

In all cases where the Department has the right to consent to medical care for a ward or a child in its care or in its custody, the Department shall consider exclusively what will serve the child's best interests.

REGULATORY AUTHORITY

110 CMR 11.00: M.G.L. c. 112, § 12; c. 201; c. 123, § 10 and c.119, § 23(H).