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Local Commissioners Memorandum

Transmittal:	14-OCFS-LCM-16
To:	Local District Commissioners
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	October 24, 2014
Subject:	Medical Consents for Destitute Children
Suggested Distribution:	Directors of Social Services Foster Care Supervisors and Workers Staff Development Coordinators
Contact Person(s):	Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services: Buffalo Regional Office-Dana Whitcomb (716) 847-3145 Dana.Whitcomb@ocfs.ny.gov Rochester Regional Office-Karen Buck (585) 238-8201 Karen.Buck@ocfs.ny.gov Syracuse Regional Office-Sara Simon (315) 423-1200 Sara.Simon@ocfs.ny.gov Albany Regional Office-Kerri Barber (518) 486-7078 Kerri.Barber@ocfs.ny.gov Spring Valley Regional Office-Yolanda Désarmé (845) 708-2498 Yolanda.Desarme@ocfs.ny.gov New York City Regional Office-Raymond Toomer (212) 383-1788 Raymond.Toomer@ocfs.ny.gov Native American Services-Heather LaForme (716) 847-3123 Heather.LaForme@ocfs.ny.gov
Attachments:	Online only
Attachments Available Online:	LDSS-0777: Consent for Child's Special or Emergency Medical or Surgical Treatment http://ocfs.state.nyenet/admin/forms/Foster_Care/

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
12-OCFS-ADM-08 08-OCFS-INF-02 90-OCFS-ADM-21		18 NYCRR 441.22 (d)	FCA §1089 FCA §1092(a) SSL §383-b SSL §398(6)		LDSS- 0777

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to inform local departments of social services (LDSS) of the provisions of Chapter 279 of the Laws of 2014 that went into effect on August 11, 2014. This chapter law amends §383-b of the Social Services Law (SSL) to allow LDSS commissioners to consent to medical, dental, and health and hospital services on behalf of destitute children in their care and custody.

II. Background

In September of 2012, three chapter laws went into effect, Chapters 605 and 607 of the Laws of 2011, and Chapter 3 of the Laws of 2012. These chapter laws enacted Article 10-C of the Family Court Act (FCA) and amended the SSL in relation to the definition of a destitute child and the procedures for LDSS to obtain custody of and provide services to destitute children in their care. OCFS issued an Administrative Directive, Destitute Child Placement Procedures and Guidelines (12-OCFS-ADM-08), to provide guidance to LDSS with regard to these amendments.

For the purposes of entry into foster care in accordance with Article 10-C of the FCA, a destitute child is defined as:

- a child under the age of 18 who is in a state of want or suffering due to a lack of sufficient food, clothing, shelter or medical or surgical care; and
- does not fit into the definition of an ‘abused child’ or ‘neglected child’ as defined in §1012 of the FCA; and
- is without a parent or caretaker available to sufficiently care for him or her due to certain specified conditions.

Upon an adjudication that a child is destitute in accordance with Article 10-C of the FCA, the child’s case follows most of the court-related procedures as for children who are in foster care pursuant to Article 10 of the FCA as abused and/or neglected children, including permanency hearing requirements set forth in Article 10-A of the FCA.

§398(6) of the SSL states that LDSS commissioners must provide for the children in their custody, including destitute children, with "expert mental and physical examination of any child whom he has reason to suspect of mental or physical disability or disease" as well as "necessary medical or surgical care in a suitable hospital, sanatorium, preventorium or other institution or in his own home for any child needing such care." OCFS regulation 18

NYCRR 441.22 (d) requires LDSS, prior to or within 10 days of placement, to request authorization in writing from the child's parent or guardian for routine medical and/or psychological assessments, immunizations and medical treatment, and for emergency medical or surgical care. The regulation provides that if consent cannot be obtained from a parent or guardian, LDSS may provide written authorization in accordance with §383-b of the SSL, which does not apply to Article 3 (PINS) and Article 7 (JD) placements.

In the case of a destitute child, the child's parent or guardian is unavailable for such consent due to death, incapacitation, whereabouts unknown, or residing out of state or country, and the LDSS has been unable to return the child to the parent or caretaker. Prior to the enactment of Chapter 279 of the Laws of 2014, though the authority existed for LDSS commissioners to consent to medical treatment in lieu of the parental consent under §383-b of the SSL, the law only authorized LDSS commissioners to "give effective consent for medical, dental, health and hospital services" for abused and neglected children in their care and was not amended to include destitute children when Article 10-C took effect. Due to this gap in the law and the unavailability of the child's parent or guardian, LDSS commissioners were unable to consent for a destitute child's medical treatment, absent a court order. Chapter 279 of the Laws of 2014 closed this gap by amending §383-b of the SSL to include destitute children.

III. Program Implications

Effective August 11, 2014, LDSS commissioners are now authorized to consent to medical, dental, health and hospital services on behalf of the destitute children in their care and custody when consent is not received from the child's parent or guardian, the same as is done for any other child in foster care due to an Article 10 abuse and/or neglect case. This change allows the LDSS commissioners to fulfill their obligations to provide medical care to the destitute children in their care, thereby promoting the safety and well-being of all of the children in their care and custody.

When authorizing medical consent for destitute children, LDSS should follow their established medical consent procedures for children in foster care due to an Article 10 abuse and/or neglect case. Use of the form LDSS-0777 *Consent for Child's Special or Emergency Medical or Surgical Treatment* or a local equivalent form may be used as documentation by LDSS to provide consent for a destitute child's medical care. LDSS that contract with voluntary authorized agencies to provide foster care case management services should provide the information within this LCM to the appropriate voluntary agency contacts.

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