THE RIGHTS OF YOUTH IN THE CUSTODY OF THE MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES REGARDING MEDICAL TREATMENT

Prepared by the Mental Health Legal Advisors Committee
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Often, youth with mental health or behavioral issues are treated with antipsychotic and/or other powerful medications. This approach is true for all youth, but particularly for youth in the *custody* of the Massachusetts Department of Children and Families (DCF).

This guide explains the rights of youth (and their parents) in such situations. This guide is specifically about the rights of youth in DCF *custody*.

Before we discuss the rights of youth **in DCF *custody***, we offer a few words about youth in **DCF *care*.**

How does being in DCF care affect the parents' right to make medical treatment decisions?

In general, when a youth is in **DCF care**,[1] the youth's parents retain the right to make decisions regarding medical treatment.

How does being in DCF custody affect the parents' rights to make medical treatment decisions?

In general, when a youth is in **DCF custody**, the youth's parents lose the right to make medical treatment decisions. This is discussed in more detail below.

How may a youth come into DCF custody?

In general, there are three ways that a youth may come into DCF custody.

- Parents, guardians, or school officials may ask the court to help supervise a youth by filing a **Child Requiring Assistance (CRA)** application. A court then may decide to place the youth in DCF's custody.

- DCF may bring a **Care and Protection (C&P) action** in the Juvenile Court seeking temporary custody to ensure a youth's well-being. A C&P is a court proceeding in which someone, usually DCF, files a petition stating that a youth is at risk of serious abuse or neglect by a caretaker, usually a parent or guardian. The court may decide to transfer *temporary* or *permanent* custody to DCF or another party.[2]

    - In some cases, a C&P action may follow after parents and DCF enter into an arrangement known as a Voluntary Placement Agreement (VPA) whereby DCF agrees to provide services to a youth.[3]

- During a **pending case in the Probate and Family Court** (such as a custody dispute between parents or a guardianship proceeding for a youth), the court may place the youth in DCF's custody.[4]

Who consents to routine medical treatment for youth in DCF custody?

When a youth is in DCF custody, DCF assumes from parents the powers to "determine a child's place of abode, medical care and education."[5] However, DCF does not gain the authority to make *all types* of medical decisions, but only decisions about **routine medical treatment**.[6]

Who consents to extraordinary medical treatment for youth in DCF custody?

Decisions about **extraordinary medical treatment** might be made by parents or might require **court** approval, depending on how the youth came into DCF custody.[7] Here are the possibilities:

- **Youth in DCF custody pursuant to a CRA** → Parents make decisions about extraordinary medical care.[8]

- **Youth in DCF custody pursuant to a C&P** → DCF must seek judicial authorization to authorize extraordinary medical care.[9]

- **Youth in DCF custody pursuant to pending case in the Probate and Family Court** → DCF must seek judicial authorization to authorize extraordinary medical care.[10]

What medical treatment is considered routine and what treatment is considered extraordinary?

Under Massachusetts law, some kinds of treatment are considered "routine" treatment, while other kinds are considered "extraordinary."

DCF defines "**routine** medical care" as any treatment that is "commonly prescribed for a specific physical illness, which treatment does not pose risks of permanent serious side effects or risk of death."[11] DCF regulations list examples of routine medical treatment.[12]

In general, **extraordinary** treatments are those that are considered particularly intrusive, risky, or restrictive of the person's liberty.[13] In some cases, there is clear legal authority stating that a treatment should be considered extraordinary. For example, DCF considers antipsychotic medication to be extraordinary treatment.[14]

However, even when the law does not clearly dictate that a treatment is extraordinary, the treatment might still be considered extraordinary. When presented with such a question, the court must decide if a treatment is routine or extraordinary using certain established factors.[15] However, because the analysis is individualized, a type of treatment might be considered routine in one case and extraordinary in another.

What are antipsychotic medications?

Antipsychotic medications are drugs prescribed in response to symptoms -- delusions, hallucinations, and disorganized thinking – that doctors associate with psychosis. Patients

receiving antipsychotic medications may be diagnosed with schizophrenia, bipolar disorder, or other psychotic disorders. Antipsychotics are also prescribed "off-label," meaning for uses that are not explicitly approved by the federal Food and Drug Administration (FDA). For example, patients receiving antipsychotics off-label may be diagnosed with major depressive disorder or attention deficit hyperactivity disorder (ADHD).

DCF has a list of medications it considers to be antipsychotic medications: Abilify, Vraylar, Clozaril, Thorazine, Latuda, Zyprexa, Invega, Seroquel, Risperdal, and Geodon.[16]

Antipsychotic medications are considered powerful because they can alter brain functioning and can have serious and debilitating side effects. Common side effects include sedation, headaches, weight gain, and dizziness. More serious side effects are also possible.[17]

What should one do if a medication, other than an antipsychotic, is being prescribed to a youth in DCF custody to treat a mental health or behavioral conditions?

In addition to antipsychotics, there are other medications (such as stimulants or antidepressants) used to treat mental health or behavioral conditions. Treatment with these medications often is not scrutinized to the same degree as is treatment with antipsychotics, although these medications are also powerful and also have potentially serious side effects.

Whether such medications should be considered "routine" or "extraordinary" treatment is an important question. DCF, medical professionals, and the courts may designate these medications as "routine" and therefore not requiring of judicial consent. However, youth, parents, and foster parents should learn about a proposed "routine" medication before accepting that designation.

In addition, even for treatments that are considered routine, if the parents or the youth opposes it, their attorneys can help them challenge the DCF decision to consent to the treatment by talking to DCF and/or going to court.

What process does DCF use when a prescriber wants to treat a youth in DCF custody with antipsychotics?

Remember that DCF cannot simply consent to treat a youth in its custody with extraordinary treatments but must seek authority from the court. When a prescriber proposes such treatment, DCF should follow this process:

1. The prescriber provides DCF with their affidavit and proposed treatment plan.
2. DCF staff gather certain information.[18]
3. DCF provides the affidavit, treatment plan, and the collected information to the DCF program that reviews such proposals, the DCF Antipsychotic Medication Monitoring Program (AMP) (discussed further below).
4. AMP staff review the submission and make a recommendation to the court to either move forward with the court process, modify the proposed treatment plan and move forward, or not move forward with the process.[19]
5. If AMP staff recommend moving forward, the DCF attorney files a motion in court asking the court to consider the proposed treatment plan.
6. The court considers the proposed treatment plan. In this process, the youth and the parents are each represented by legal counsel.

7. If the court, after a hearing (known as a *Rogers* hearing after one of the controlling cases), decides to authorize the proposed treatment plan, the court will issue an order and appoint a Guardian Ad Litem to monitor the plan.

What is the DCF Antipsychotic Medication Monitoring Program (AMP)?

The Antipsychotic Medication Monitoring Program (AMP) is a DCF program that reviews requests for antipsychotic medications for youth in DCF custody.[20] The AMP review is conducted by a team including the DCF Child and Adolescent Psychiatrist (CAP), the Psychiatric Social Worker, and the Consultant Psychiatric Nurse Practitioner.

The AMP's review will occur when:

- A youth is newly starting antipsychotics;
- A youth comes into care already on antipsychotics;

DCF is seeking approval from the court for approval to administer extraordinary medical treatment. AMP staff are also supposed to work with MassHealth to review DCF youth that MassHealth flags for high-risk prescribing (using the PBHMI process described below).[21]

AMP reviews are available to the court. They should be noted by the parties, including for suggestions regarding specific psychosocial supports, specialty clinics, ways to deprescribe, potential drug interactions, and monitoring that should occur in a particular case.[22]

What is MassHealth's review program for prescribing medication to youth?[23]

MassHealth (Medicaid) has its own program, called the Pediatric Behavioral Health Medication Initiative (PBHMI), to review high-risk medications prescribed to MassHealth-insured youth under age 18. Since all youth in DCF care or custody receive MassHealth through DCF,[24] PBHMI is available to all DCF-involved youth (until age 18).

PBHMI will review a case if:

- certain classes of behavioral health medication are prescribed; and/or
- specific medication combinations are prescribed (known as "polypharmacy")[25]

or if:

- evidence is limited that a medication is safe and effective for youth.

The kinds of behavioral health medication that PBHMI reviews include:

> alpha2 agonists, antidepressants, antipsychotics, armodafinil, atomoxetine, benzodiazepines, buspirone, cerebral stimulants, donepezil, hypnotic agents, memantine, meprobamate, modafinil, mood stabilizers (agents considered to be used only for seizure diagnoses are not included), naltrexone, prazosin, and viloxazine.

A complete list is available at www.mass.gov/druglist.

A review doesn't occur every time a behavioral health medication is prescribed, but must occur when:

- A youth under age 18 is prescribed multiple behavioral health medications from the same class or from different classes.
- A youth under age 3 is prescribed certain behavioral health medications.

And a review might occur when

- A youth under age 10 is prescribed an antipsychotic.
- A youth under age 6 is prescribed an antidepressant, armodafinil, atomoxetine, benzodiazepine, buspirone, donepezil, hypnotic, memantine, meprobamate, modafinil, mood stabilizer[26] (agents considered to be used only for seizure diagnoses are not included), naltrexone, prazosin, or viloxazine.

So, MassHealth will often, but not always, review medications prescribed to youth in DCF custody for mental health or behavioral conditions.

Should others also review medications prescribed to youth in DCF custody?

Yes. While DCF and MassHealth have responsibilities, as described above, to review proposed prescribing, others, including youth, parents, and foster parents, also should carefully examine proposals to medicate. Involved persons can ask questions of the provider and monitor the effects (and side effects) of medications.

When the court is involved, the attorney for the child will, of course, investigate these issues. Additionally, the judge has the responsibility to consider the benefits and risks of medication as part of the *Rogers* hearing process. And, if the court is considering a proposal to treat with extraordinary medication, the court-appointed Guardian Ad Litem is supposed to investigate, make a recommendation regarding the proposed treatment plan, and monitor any approved plan.

Who can answer questions about the rights of youth, parents, and foster parents when a youth is prescribed medications for psychiatric and/or behavioral issues?

If you are a **youth** in DCF custody -- > contact the court appointed attorney representing you on DCF matters and/or any petition for a court order for a proposed extraordinary treatment plan.

If you are a **parent** of a youth in DCF custody -- > contact your court appointed attorney for DCF matters.

If you are a **foster parent** of a youth in DCF custody, you might also reach out to the youth's attorney or the DCF case worker with questions about medications. You could ask questions about

- the proposed medication,
- the possibility that there were reviews by MassHealth and/or DCF, and
- the *Rogers* hearing to consider a proposed treatment plan for the administration of extraordinary medical treatment.

The youth, parent, or foster parent also can ask

- MassHealth whether they have reviewed the proposed plan to treat with medication through their Pediatric Behavioral Health Medication Initiative; and/or

- DCF whether they have reviewed the proposed plan to treat the youth with medication through their Antipsychotic Medication Monitoring Program.

We note that parents of youth in DCF custody may have difficulty receiving information from MassHealth (or from DCF) if the parent does not have legal custody of their child.

ENDNOTES

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[1] A youth may come to be in DCF care pursuant to:
- A Voluntary Placement Agreement (VPA) between DCF and the parent whereby DCF agrees to provide services to the youth. A VPA is the typical way for a youth to come into DCF care.
- A G.L. c. 119, § 23(a)(1) petition filed by DCF in Probate and Family Court with parental consent. The petition may only be filed if there is a VPA allowing for placement for reasons related to the youth's disability and there are no protective concerns. A petition under this section is a rare occurrence.

[2] DCF may be granted temporary custody of a child following a temporary custody hearing pursuant to G. L. c. 119, § 24, fourth par. The statute never uses the term "permanent." However, a decree following a care and protection trial that grants DCF custody until the child turns 18 is referred to as a permanent custody order. Custody may continue until that child turns age 18 or until DCF decides to return the child to their parents. G.L. c. 119, § 26.

[3] Once a VPA is established, if the parent wants to terminate the VPA, DCF may pursue a C&P if it has protective concerns. See 110 CMR 4.06(4)(b).

[4] Pursuant to G.L. c. 119, § 23(a)(3), DCF may pursue custody through a petition in the Probate and Family Court.

[5] G. L. c. 119, § 21. If the youth is under guardianship, the guardian consents to routine treatment (and DCF must seek judicial authorization to administer extraordinary treatment).

[6] See 110 CMR 11.01; 110 CMR 11.04(2).

[7] See 110 CMR 11.01; 110 CMR 11.17(2).

[8] See 110 CMR 11.01; 110 CMR 11.02. (The designation of a CRA youth as being in the "care"—as opposed to the "custody"—of DCF is limited to the extraordinary medical treatment regulations in 110 CMR 11.)

[9] See 110 CMR 11.01, 110 CMR 11.02.

[10] See 110 CMR 11.01, 110 CMR 11.02.

[11] 110 CMR 2.00; 110 CMR 11.04. Routine medical care includes allergy shots, physical examinations, dental care, and outpatient "psychiatric assessment, evaluation, or treatment," 110 CMR 11.04(1)(r), but see the discussion in this guide regarding antipsychotic medications. Routine medical care also includes any treatment that "is determined not to be extraordinary medical treatment" as defined by DCF regulations and case law. See 110 CMR 11.04.

[12] 110 CMR 2.00; 110 CMR 11.04.

[13] See Rogers v. Commissioner of Department of Mental Health, 390 Mass. 489 (1983); Guardianship of Roe, 383 Mass. 415 (1981).

[14] 110 CMR 2.00, 110 CMR 11.14.

[15] In re Spring, 380 Mass. 629 (1980).

[16] DCF published this list in materials for its Antipsychotic Medication Monitoring Program (AMP), discussed below. DCF Antipsychotic Medication Monitoring Program PowerPoint (Winter 2024) (on file with MHLAC) (hereinafter AMP PowerPoint) at 8. In its regulations, DCF has an older list of antipsychotic medications. 110 CMR 11.14.

[17] These side effects include metabolic syndrome, seizures, low white blood cell count, and heart rhythm abnormalities. AMP PowerPoint at 6.

[18] The questions are:

1.What are the concerns for the child's safety/risk? 2. Are there any concerns related to the child's current functioning (e.g., relationships with peers, hygiene, sleep, appetite)? 3. Does the child/family receive services from the school, community, or psychotherapy treatment (e.g., IEP, therapy)? 4. Has the child had any recent disruptions or hospitalizations in the last year? 5. What are the family's views of the proposed medication? 6. What are the youth's views of the proposed medication? 7. What are DCF's views of the proposed medication? 8. Does the child have a history of obesity, diabetes, or abnormal EKGs? 9. Does the child have a history of any other medical conditions? 10. Do you have any additional relevant information?

AMP PowerPoint at 13.

[19] AMP PowerPoint at 13.

[20] AMP reviews C & P custody or Probate and Family Court custody, but not CRA or VPA cases. AMP PowerPoint at) at 14. In addition to the AMP review process, DCF clinical staff also flag certain cases of youth in DCF custody for a separate internal psychotropic consultation. For these youth, clinical staff conduct a medical review of the child welfare record system, review Medicaid claims data for the youth, make written recommendations to the DCF team, conduct outreach to the treatment provider, and coordinate with the medical Guardian Ad Litem and court. DCF conducts such consultations in 70 to 80 cases annually. Consultations are internal but recommendations may be forwarded to court. Presentation of Dr. Wynn Morgan to Committee for Public Counsel Services Children and Family Law Division Training (Nov. 12, 2025), available at https://vimeo.com/1136723734/645b51ee37?share=copy&fl=sv&fe=ci.

[21] AMP staff report that they also keep a data base of reviewed cases for quality assurance purposes and do some monitoring annually to make sure required laboratory tests are being conducted. Id. AMP staff further report that they outreach to the psychiatric prescriber in 54% of cases to ensure appropriate monitoring of prescribed medication. Id.

[22] Id.

[23] Information in this section draws from https://www.mass.gov/info-details/masshealth-pediatric-behavioral-health-medication-initiative-questions-and-answers and https://repository.escholarship.umassmed.edu/server/api/core/bitstreams/720eebe0-6af6-4a1c-a383-7d3e8e36457d/content. See also form at https://mhdl.pharmacy.services.conduent.com/MHDL/pubdownloadpa.do?id=9594.

[24] After youth in DCF care or custody turn 18, they can continue to receive MassHealth until age 21 if they sign a VPA with DCF, or if they leave DCF care/custody between ages 18 and 21 and remain in Massachusetts.

[25] For the Initiative, polypharmacy is defined as the use of:

- More than one agent within the same medication class (e.g., two or more antidepressants, two or more antipsychotics, three or more mood stabilizers, etc.), as well as
- Four or more behavioral health medications in a regimen, whether within the same medication class or across different behavioral health medication classes, when certain

medications are included in the regimen (e.g., an antipsychotic, a benzodiazepine, divalproex/valproate, lithium, or a tricyclic antidepressant), or

- Five or more behavioral health medications in a regimen, regardless of the medications included.

[26] Mood stabilizers include anticonvulsants that may be used for behavioral health indications (agents considered to be used only for seizure diagnoses are not included). Lithium is also classified as a mood stabilizer under this initiative.