

## Apprehension for Medical Treatment

This section applies to children who require emergency medical attention and who are reported to or apprehended by a child and family services agency.

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### Legislation

Under [clause 17\(2\)\(b\)](#) of *The Child and Family Services Act*, a child is in need of protection where a parent or guardian neglects or refuses to permit medical or other remedial care or treatment necessary for the health or well-being of the child and recommended by a duly qualified medical practitioner.

[Section 25](#) of the Act lists agency responsibilities for the care of children under apprehension and states when an agency may authorize a medical examination and medical or dental treatment. It also provide for applications to court to authorize examination or treatment when:

- a child 16 years of age or older refuses to consent to an examination or treatment
- a parent or guardian refuses to consent to treatment for an apprehended child under 16 years of age

The provisions of section 25 are consistent with the age of capacity defined in [section 4](#) of *The Health Care Directives Act* and [section 2](#) of *The Mental Health Act*.

### Policy

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## Emergency Medical Referrals

Health professionals and facilities must have immediate access to a child and family services agency when a child requires emergency medical attention and a parent or guardian is not available, or neglects or refuses to consent to recommended medical care or treatment.

The [designated intake agency](#) (DIA) has the primary responsibility in the area where the referring health professional or facility is located to respond to emergency medical referrals. Section 6 of the [Joint Intake and Emergency Services by Designated Agencies Regulation](#) lists the responsibilities in this regard.

When an agency other than the designated intake agency receives the emergency medical referral, that agency immediately notifies the designated agency where the referring professional or facility is located of the referral. Consistent with section 7 of the [Joint Intake and Emergency Services by Designated Agencies Regulation](#) and [Standard 14](#) in Section 1.1.1, Intake, the DIA assumes responsibility for responding to the referral unless and until another agency agrees to do so, has an open child protection case on the family of the child, or has apprehended the child prior the referral (see [Child Already Under Apprehension](#) in this section).

## Apprehending for Medical Treatment

A child is in need of protection when the child requires medical care or treatment necessary for the child's health or well-being recommended by a medical practitioner, and a parent or guardian neglects or refuses to consent to such care or treatment.

The following procedures apply when apprehending a child because a parent or guardian neglects or refuses to consent to medical or dental *treatment*, or a child 16 years of age or older refuses to consent to a medical *examination* or medical or dental *treatment*:

1. Obtain sufficient medical and non-medical information concerning the child and family to make an informed decision on the matter. Factors to be considered include:
  - confirmation of neglect or refusal of a parent or guardian to consent
  - the seriousness of the child's condition and urgency of the need for treatment
  - the likelihood that the recommended medical treatment will be effective
  - confirmation that alternative procedures are not feasible
  - impact on the child's mental and emotional development
  - the child's wishes

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2. When the child requires emergency medical attention, immediately attend at the medical facility or, if there is no alternative due to time and distance, immediately communicate by telephone with the reporting medical practitioner.
  3. Request sufficient information about the child's condition and circumstances to make an informed decision and take notes of the facts and events for ongoing reference and in the event the notes are needed for court.
  4. When the child's condition and circumstances allow sufficient time, request a second medical opinion when it is not clear a recommended procedure is required or will be successful or when there are serious medical risks involved.
  5. If the child is in need of protection, apprehend and leave or place the child in hospital as a place of safety.
  6. Notify the parent or guardian and the health care practitioner of the apprehension and what further action the agency is considering. When there is no alternative due to time and distance, notification may be by telephone.
  7. When circumstances permit, confirm the apprehension in writing, noting:
    - the full name of the child
    - the name of the agency and agency representative
    - the time and date of the apprehension
    - the names of persons who have been notified

When there is no alternative due to time and distance, the decision to apprehend may be conveyed by telephone, preferably to two health care practitioners at the same time.

8. Proceed to obtain an [order for examination or treatment](#).

### Child Already under Apprehension

An agency may authorize a medical *examination* of an apprehended child less than 16 years of age when the consent of a parent or guardian would otherwise be required. There is no need to contact a parent or guardian. For example, this legal authority applies to child abuse investigations (see Section 133, [Child Abuse Investigations](#)).

An agency may also authorize medical or dental *treatment* of a child less than 16 years of age when the consent of a parent or guardian would otherwise be required and the parent

or guardian is not available. Reasonable efforts must be made to advise the parent or guardian of the child's need for treatment and to obtain consent.

The following procedures apply to a child who has already been apprehended for reasons other than the need for medical treatment:

1. When the child requires emergency medical attention, immediately attend at the medical facility or, if there is no alternative due to time and distance, immediately communicate by telephone with the reporting medical practitioner.
2. Request sufficient information about the child's condition and circumstances to make an informed decision and take notes of the facts and events for ongoing reference and in the event the notes are needed for court.
3. When the child's condition and circumstances allow sufficient time, request a second medical opinion when it is not clear a recommended procedure is required or will be successful or when there are serious medical risks involved.
4. Proceed to obtain an [order for examination or treatment](#).

### Routine Medical Treatment

On apprehending a child under 16 years of age, an agency may ask a parent or guardian to sign a consent form for routine medical or dental treatment. This practice may reduce the need for referrals for medical or dental treatment required in this section. A printable version of a suggested consent form is available through the Child and Family Services Information system.

### Order for Examination or Treatment

When a child less than 16 years of age is under apprehension and requires medical or dental *treatment*, and a parent or guardian is available but refuses to consent to the recommended treatment, an agency must apply to court for an order authorizing the treatment to override the wishes of the parent or guardian.

When a child 16 years or older is under apprehension and refuses to consent to a medical *examination* or medical or dental *treatment*, an agency must apply to court for an order authorizing the examination or treatment to override the wishes of the child.

The following procedures apply to the above-noted situations:

1. Consider the wishes of the child and whether the child is objecting to an examination or recommended treatment.

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2. Request a written recommendation from the attending health care practitioner prior to applying for an order when the child's condition and circumstances allow sufficient time or soon as reasonably possible following the medical examination or treatment.
  3. When the child's condition and circumstances allow sufficient time, prepare court documents (see [Court Forms](#) below) and serve a copy on the parent or guardian, a child 12 years of age or older and the health care facility. Court documents may be faxed to the court. When a delay would jeopardize the health of the child, the court may allow these documents to be filed after the hearing.
  4. When an immediate order for treatment is necessary, contact the court to request to have a judge attend at the health care facility for hearing. When possible, it is preferable for a court reporter to record the hearing.
  5. When it is not possible for a judge to attend at the facility, request a hearing by telephone. When possible, it is preferable to have a court reporter record the conversation so there is a record of the proceedings.
  6. When the court grants an order without documentation having been filed, prepare and file the required court forms within 24 hours of the hearing.

## Court Forms

For a child not already apprehended, the investigating agency must apprehend the child under [section 21](#) of *The Child and Family Services Act* using prescribed form CFS-19 in the [Child and Family Services Regulation](#) if proceeding with an application under section 25 of the Act. A printable version of this form is available through the Child and Family Services Information System (CFSIS).

For applications under section 25 of the Act, agencies are required to use the following forms available through CFSIS

- Notice of Motion – s. 25 CFS Act (Queen's Bench)
- Notice of Motion – s. 25 CFS Act (Provincial Court)
- Order for Medical Examination or Medical or Dental Treatment – s. 25 CFS Act (Queen's Bench)
- Order for Medical Examination or Medical or Dental Treatment – s. 25 CFS Act (Provincial Court)

Agencies may also use a suggested form, Consent to Routine Medical Treatment, for treatment of an apprehended child that does not involve admission to hospital or use of a general anesthetic.

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## Contacting Courts in Emergencies

Agencies must ensure that all agency staff involved in child protection work know how and where to contact a judge in an emergency. The following information should be posted and readily available:

- In Winnipeg or Selkirk, call the Court of Queen's Bench in Winnipeg (Office hours: 945 4209; after hours: 981 9030).
- In Brandon, call the Court of Queen's Bench (Office hours: 726 6240). After hours, contact the judge directly where there is an arrangement for handling emergency situations or the Court of Queen's Bench at 981 9030.
- In all other areas of the province, apply to the Court of Queen's Bench or the Provincial Court. During office hours, contact the nearest court office. After hours, contact the local Provincial Court judge directly where there is an arrangement for handling emergency situations or the Court of Queen's Bench at 981 9030.

**Note:** Agencies outside of Winnipeg are advised to establish arrangements with local judges where possible.

## Standards

1. **Response to Medical Emergency Referrals** – Consistent with section 6 of the [Joint Intake and Emergency Services by Designated Agencies Regulation](#) and the [emergency medical referral](#) policy in this section, the designated intake agency in the geographic area where a health practitioner or facility is located ensures that there is an immediate and appropriate response to a referral that a child is in need of emergency medical attention.
2. **Contacting the Courts** – Agencies ensure that all workers and supervisors involved in the delivery of child protection services are provided with current information on how and where to contact a judge to proceed with an application for an order under [section 25](#) of *The Child and Family Services Act*.