

Consenting to Medical Treatment for a Child Placed in the Custody of County Department Part I: Routine and Emergency Care and Evaluations in Exigent Circumstances

Through [S.L. 2015-136](#), “An Act to Make Various Changes to the Juvenile Laws Pertaining to Abuse, Neglect, and Dependency,” the General Assembly enacted G.S. 7B-505.1 and G.S. 7B-903.1(e). These two new statutes address medical decision-making authority for a child who is placed in a county department’s custody through an order entered in an abuse, neglect, and dependency action. These new laws apply to all abuse, neglect, and dependency actions that were pending on or filed after October 1, 2015.

Custody Ordered to a County Department

The court may order the child into a county department’s custody at two different stages in the abuse, neglect, and dependency action: nonsecure custody and/or disposition.

An order for **nonsecure custody** is a temporary custody order that is entered by the court to protect a child when specific statutory criteria are met. [G.S. 7B-503](#). The order is entered before the court holds the adjudicatory hearing to determine if the child is abused, neglected, or dependent. [G.S. 7B-502](#), [-506\(a\)](#). The order for nonsecure custody must state who the child will be placed with or who has responsibility for the child’s placement. [G.S. 7B-505](#). When a county department seeks an order for nonsecure custody, the court must first consider “release of the juvenile to the juvenile’s parent, relative, guardian, custodian, or other responsible adult.” G.S. 7B-503(a). If nonsecure custody is not granted to one of these individuals, the court may order the child in nonsecure custody with the county department. G.S. 7B-505(a).

If the child is adjudicated abused, neglected, or dependent, the court proceeds to an initial dispositional hearing. [G.S. 7B-901\(a\)](#). One of the issues the court decides at **disposition** is custody of the child. [G.S. 7B-903](#). Dispositional orders will be entered throughout the proceeding, including after each review and permanency planning hearing. [G.S. 7B-905](#), [-906.1](#), [-906.2](#). At disposition, custody may be ordered to a parent, guardian, custodian, or county department. G.S. 7B-903. A county department with custody of the child has placement responsibility for the child. G.S. 7B-505(a), [-507\(a\)\(4\)](#), [-903\(a\)\(6\)](#). A department may place the child in a licensed foster home.

Routine and Emergency Care and Evaluations in “Exigent Circumstances”

The new G.S. 7B-505.1 applies when a child is placed in the custody of a county department. See *also*, G.S. 7B-903.1(e). The statute explicitly allows the director, or the department social worker as the director’s representative, to arrange for and consent to the child’s

- routine medical and dental care;

- emergency medical, surgical, or mental health care; and
- testing and evaluation in exigent circumstances.

G.S. 7B-505.1(a), -[101\(10\)](#).

None of the terms above are defined in the Juvenile Code and lead to the following questions: what is routine care; what is emergency care; and what constitutes exigent circumstances? Until the statutory language or case law addresses these questions, the answers are subject to interpretation.

Routine Care

Although specifically referred to in G.S. 7B-505.1(a)(1), “routine care” is not defined. One can look to sources outside of the North Carolina General Statutes, such as the American Academy of Pediatrics or the Early Periodic Screening Diagnostic and Treatment program under Medicaid, for guidance. One type of care that is widely recognized as routine is the well-child visit, which involves a variety of evaluations: measurements (height, weight, and blood pressure); a check of vital functions; vision, hearing, dental, developmental, and lead screening; a physical examination; and up-to-date immunizations. [42 C.F.R. 441.56\(b\)](#), see also [healthychildren.org](https://www.healthychildren.org).

What about a “sick visit” when a child is taken to a medical provider because of an illness or injury, such as an ear infection or knee pain? Is a “sick visit” routine? Routine means “a regular course of procedure.” [Merriam-Webster Dictionary](#). A routine practice for a parent of a sick child probably includes scheduling a “sick visit” with the child’s medical provider and following the course of recommended treatment. Not all “sick visits” will be routine. Depending on the illness or injury, the care may constitute emergency care, or the treatment may require “informed consent” as the term is used in G.S. 7B-505.1(c) from the child’s parent, guardian, or custodian, or from the county department when it has obtained a court order authorizing it to consent to the child’s treatment. Part II of this post will discuss G.S. 7B-505.1(c).

What happens when a child is diagnosed with a chronic condition (e.g., diabetes, a seizure disorder, or cancer) that requires a specific treatment? Because the treatment for that condition is not routine to all children, the treatment is probably not routine care for purposes of consent pursuant to G.S. 7B-505.1(a)(1) even though the treatment for a specific condition is commonly accepted in the medical community.

Based on the wording of the statute, routine care probably excludes mental health treatment. “Mental health” is explicitly included in the language allowing for emergency treatment (G.S. 7B-505.1(a)(2)) and for treatment that requires a court order authorizing the county department to provide consent for the child’s care (G.S. 7B-505.1(c)(1) & (6)). The language used in G.S. 7B-505.1(a)(1) limits “routine” care to medical and dental treatment and is silent about mental health treatment.

As part of “routine care,” a medical provider may determine the child requires a referral to another provider for evaluation and/or treatment (e.g. a specialist or mental health evaluation). G.S. 7B-505.1 does not prohibit the referral of the child patient to another medical provider but instead addresses who is authorized to consent to the child’s evaluation and/or treatment provided by that specialist.

What is Emergency Treatment?

Emergency care is referenced in G.S. 7B-505.1(a)(2) but is not defined. Various sources provide guidance for how one may interpret emergency treatment. For example, [G.S. 90-21.1](#) authorizes a medical provider to treat a child without the consent of a parent, guardian, or person acting in loco parentis to the child when the necessity for immediate treatment is so apparent that a delay would endanger the child’s life or seriously worsen the child’s condition. It is important to note that G.S. 7B-505.1 does not prohibit a medical provider from providing emergency treatment in situations described by G.S. 90-21.1.

Additional guidance is provided by the federal Medicaid regulations, which define an "emergency medical condition" and "emergency services." [42 C.F.R. 438.114\(a\)](#). Emergency services are furnished to an individual by a medical provider when needed to evaluate or stabilize an emergency medical condition. An emergency medical condition involves acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following

- placing the person’s health (and if pregnant, the woman or her unborn child) in serious jeopardy,
- serious impairment of bodily functions, or
- serious dysfunction of any bodily organ or part.

What are exigent circumstances?

Exigent means requiring immediate attention. [Merriam-Webster Dictionary](#). Treatment in exigent circumstances is limited to testing or evaluation, and therefore, differs from emergency medical, surgical, psychiatric, psychological or mental health care. The statute does not identify any tests or evaluations that a county department may consent to because of exigent circumstances.

A Child Medical Evaluation (CME)

An evaluation in exigent circumstances is not a **Child Medical Evaluation (CME)**. A CME is specifically addressed by G.S. 7B-505.1 which authorizes a county department to consent to a child’s CME by court order. The county department may obtain a court order authorizing it to consent to the child’s CME:

1. at the initial request for nonsecure custody; the order must contain written findings of the department's "compelling interest" in having the child evaluated before the first hearing on the need for continued nonsecure custody (G.S. 7B-505.1(b)); or
2. after a hearing on the need for continued nonsecure custody or at disposition; the order must include findings by clear and convincing evidence that the CME is in the child's best interests. G.S. 7B-505.1(c).

If a county department is consenting to the child's CME, the medical provider will need to see the court order that authorizes the department to consent to the child's evaluation. Without this court order, the child's parent, guardian, or custodian must consent to the CME. G.S. 7B-505.1(c)(4). Note, a department does not need to wait until it obtains a court order to schedule the CME. The department may schedule the CME for a date that follows a hearing that will determine who has the authority to consent to the CME.

What Do You Think?

Other interpretations are possible. Share your thoughts on what constitutes routine care, emergency treatment, and/or exigent circumstances in the comments below.

Stay Tuned for Part II: Consenting to Non-routine and Non-emergency Medical Care When a Child is Placed In the Custody of a County Department