Guideline

Document Number # QH-GDL-942:2015

# Care and Treatment Order for a Child

## 1. Purpose

This Guideline provides consistency and best practice for invoking of a Care and Treatment Order for a Child.

## 2. Scope

This Guideline provides information for all employees, contractors and consultants within Queensland Health and Hospital and Health Services (HHS).

## 3. Related documents

### Procedures, guidelines and protocols:

- Guideline for Conducting Child Sexual Assault Examinations
- Guideline for Consent in Child Protection and Management of Complex Care Cases and End of Life Decision Making
- Guideline for Health Professionals Child Safety Capability Requirements
- Guideline for Information Sharing in Child Protection
- Guideline for Reporting a Reasonable/Reportable Suspicion of Child Abuse and Neglect
- Guideline for Responding to an Unborn Child High Risk Alert

### Forms and templates:

- Queensland Health Care and Treatment Order for a Child form
- Queensland Health Extension of Care and Treatment Order for a Child form
- Queensland Health Advice of a Care and Treatment Order for a Child (Parent(s) – Child) form
- Queensland Health Advice of an Extension of Care and Treatment Order for a Child (Parent(s) – Child) form

# 4. Guideline for Care and Treatment Order for a Child

## 4.1 Appointing a designated medical officer

4.1.1 The person in charge of a health facility should appoint by written instrument, a doctor as a designated medical officer where they have the necessary expertise or experience to be a designated medical officer (*Public Health Act 2005*, s188). Where the person in charge of a health service facility is a doctor, that person is taken to be a designated medical officer for the purpose of Part 3 of Chapter 5 of the *Public Health Act 2005* while that person is in charge of the facility.

4.1.2 A record of current designated medical officers should be kept by the health facility executive.

## 4.2 Referring a concern to a designated medical officer

4.2.1 Where a staff member becomes aware of or reasonably suspects that:

- a child at a health service facility has been harmed or is at risk of harm, AND
- is likely to leave or be taken from the facility and suffer harm if immediate action is not taken, AND
- efforts have been made to gain parental cooperation to secure the child's immediate safety AND
- it is not possible to use the custody provisions of the *Child Protection Act 1999*,

the staff member should immediately contact a designated medical officer to determine if the matter reaches the threshold of a Care and Treatment Order for a Child ("order").

(**Note:** Invoking a Care and Treatment Order for a Child does not fulfil your mandatory or non-mandatory reporting responsibilities under sections 13E and 13A of the *Child Protection Act 1999).*

## 4.3 Making a Care and Treatment Order for a Child (*Public Health Act 2005*, s197, s206, s207, s209, s212)

4.3.1 Where a designated medical officer becomes aware of or reasonably suspects that:

- a child at a health service facility has been harmed or is at risk of harm, AND
- is likely to leave or be taken from the facility and suffer harm if the designated medical officer does not take immediate action, the designated medical officer shall make a Care and Treatment Order for a Child (*Public Health Act 2005*, s197).

4.3.2 The *order* should commence from the time it is made and end 48 hours after the time it was made.

4.3.3 A further *order* should not be made for the child in relation to harm, or a risk of harm, arising from the same event or circumstances that gave rise to the *order* (refer to 4.6 for extending care and treatment orders).

4.3.4 A designated medical officer may make a subsequent order for harm, or a risk of harm that arises from an event or circumstances that happen after the end of an earlier order.

4.3.5 Upon request from a parent/guardian, a designated medical officer should allow a child under the *order* to be examined by another doctor at the facility.

4.3.6 The designated medical officer should ensure that only medical examination or treatment reasonable in the circumstances is administered to the child.

## 4.4 Recording the order (*Public Health Act 2005*, s197(3))

4.4.1 The designated medical officer must immediately record the order in writing by completing the Queensland Health Care and Treatment Order for a Child form. The written record should include:

- details of the child's condition
- the reasons for the order
- the name of the facility where the child is held
- the time that is 48 hours from the time the order is made.

## 4.5 Communicating the order (*Public Health Act 2005*, s197, s198, s199, s200, s212)

4.5.1 The designated medical officer who made the order must communicate the order effectively to those who are impacted by the order.

4.5.2 To effectively communicate the order, the designated medical officer must:

- taking into consideration the child's developmental stage, explain to the child in general terms the purpose and effect of the order (note s460(5) *Public Health Act 2005*)
- notify the person in charge of the health facility **and** the chief executive of the Department of Child Safety, Youth and Women (Child Safety Services) of the order as soon as practicable. Notification must include:
    - details of the harm or risk of harm of which the designated medical officer is aware or suspected by the designated medical officer
    - the time that is 48 hours from the time the order is made when the order ends
    - the name and work contact details (i.e. address and telephone number) of:
        (i) the designated medical officer
        (ii) the professional that has given a report under s13A or s13E of the *Child Protection Act 1999* to the extent the designated medical officer has those details.
    - to the extent it can reasonably be obtained:
        (i) the child's name, date of birth and residential address or another address at which the child may live
        (ii) the name and residential address of the parents/guardian of the child or another address at which the parents may be contacted.

- explain the *order* to the parent/s of the child as soon as practicable (**see 4.5.3**). This communication should include:
    - telling at least one of the child's parents about the order including the matters contained in the written record of the order
    - telling the parent that it is an offence to remove the child from the health service facility while the order is in force
    - providing the parent with a Queensland Health Advice of a Care and Treatment Order for a Child (Parent(s) – Child) form. File a copy of this form in the child's chart
    - telling the parent that the parent may choose to have the child examined by a doctor chosen by the parent
- advise a doctor chosen by the parent of the examination or treatment undertaken for the child
- advise the HHS Child Protection Advisor or Child Protection Liaison Officer.

4.5.3 The designated medical officer need not comply with the above section (4.5.2 dot point three), namely, contacting the parents of the child, if the officer reasonably believes that (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with s200(1) of the *Public Health Act 2005* may jeopardise an investigation into the offence; or (b) compliance with s200(1) of the *Public Health Act 2005* may expose the child to harm.

## 4.6 Extending the order (*Public Health Act 2005*, s201)

4.6.1 A designated medical officer (who may or may not be the officer who gave the order) may extend the order where they are aware of, or reasonably suspect that a child at a health service facility has been harmed or is at risk of harm, and is likely to leave or be taken from the facility and suffer harm if the designated medical officer does not take action to extend the order.

4.6.2 A designated medical officer must consult with another designated medical officer prior to an extension of the order. A designated medical officer should only extend the order if the second designated medical officer agrees that the order should be extended.

4.6.3 The extension of the order should be made within 48 hours after the order was first made to a time that is not more than 96 hours after the order was first made.

## 4.7 Recording the extension of the order (*Public Health Act 2005*, s201(4))

4.7.1 The designated medical officer should record the extension of the order in writing by completing the Queensland Health Extension of a Care and Treatment Order for a Child form. The written record must include:

- the designated medical officer's name and work contact details (i.e. address and telephone number)
- the reasons for the extension of the order
- the name, address and telephone number of the designated medical officer consulted by the designated medical officer extending the order

- a statement that the designated medical officer consulted agreed that the order should be extended
- the time to which the order is extended.

## 4.8 Communicating the extension of the order (*Public Health Act 2005*, s202, s203, s204)

4.8.1 The designated medical officer who extended the order must communicate the extension of the order effectively. To effectively communicate the extension of the order, the designated medical officer must:

- notify the person in charge of the health facility of the extension of the order as soon as practicable. This notice shall include the details as described in section (4.7.1)
- notify the chief executive of Child Safety Services of the extension of the order. This notice shall include the details as described in section (4.7.1)
- explain the extension of the order to the parent/s of the child (**see 4.8.2**). This communication should include:
    - the reasons for the extension
    - the time when the order ends
    - a copy of the written reasons for the extension of the order upon request by the parent.
- advise the HHS Child Protection Advisor or Child Protection Liaison Officer.

4.8.2 The designated medical officer need not comply with the above section (4.8.1 dot point three), namely, contacting the parents of the child, if the officer reasonably believes that (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with s204(1) of the *Public Health Act 2005* may jeopardise an investigation into the offence; or (b) compliance with s204(1) of the *Public Health Act 2005* may expose the child to harm.

## 4.9 Enforcing the order (*Public Health Act 2005*, s205)

4.9.1 A designated medical officer may use all reasonable actions in the circumstances to hold a child at a health service facility or transfer a child to another health service facility.

## 4.10 Releasing a child prior to the end of an order (*Public Health Act 2005*, s206(2);(3))

4.10.1 A designated medical officer may release a child before an order ends if the designated medical officer is satisfied the reason for the order no longer exists.

4.10.2 In releasing a child, the designated medical officer must make a written record of the release including the following details:

- the reason for the release
- the time of the release
- the person into whose care the child is released.

### 4.11 Transfers while under an order (*Public Health Act 2005*, s211)

4.11.1 A child shall be transferred from one facility to another only where a designated medical officer determines it is necessary to transfer the child to, and hold the child at, another health service facility to appropriately medically examine or treat the child.

4.11.2 The designated medical officer shall advise the person in charge of the other facility of the proposed transfer.

4.11.3 The designated medical officer shall give the child's parents and the chief executive of Child Safety Services notice of the transfer as soon as practicable after the designated medical officer decides to transfer the child.

4.11.4 The designated medical officer need not comply with the above section (4.11.3), namely, contacting the parents of the child, if the officer reasonably believes that (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with s211(5) of the *Public Health Act 2005* may jeopardise an investigation into the offence; or (b) compliance with s211(5) of the *Public Health Act 2005* may expose the child to harm.

### 4.12 Clarifying legislative requirements (*Public Health Act 2005*, s186)

4.12.1 Where a staff member is concerned about an inconsistency between orders under the *Public Health Act 2005* and orders under the *Child Protection Act 1999*, the staff member shall comply foremost with the requirements of the order under the *Child Protection Act 1999*.

## 5. Review

**This Guideline is due for review on:** 01 June 2020

**Date of Last Review:** 28 May 2018

**Supersedes:** Nil

## 6. Business Area Contact

Strategy Children and Families Unit, Strategic Policy and Legislation Branch, Strategy, Policy and Planning Division.

## 7. Definitions of terms used in the guideline and supporting documents

| Term | Definition / Explanation / Details | Source |
|---|---|---|
| Care and Treatment Order for a Child | Means an order made by a Designated Medical Officer (DMO).<br>This order enables a DMO to direct that a child be held at a health service facility for an initial period not exceeding 48 hours if the DMO reasonably suspects that the child has been harmed, or is at risk of harm, AND, that the child is likely to be taken from the facility and suffer harm unless immediate action is taken. The order may be extended for an additional 48 hours, only with the agreement of a second DMO. | s.197 *Public Health Act 2005* |

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| Child | For the purposes of this document, a child is 'an individual under 18 years of age'. | s.8 *Child Protection Act 1999* |
| Child in need of protection | A child in need of protection is a child who:<br>a. has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; AND<br>b. does not have a parent able and willing to protect the child from the harm. | s.10 *Child Protection Act 1999* |
| Designated Medical Officer | Means a doctor appointed as, or who is, a Designated Medical Officer. If the person in charge of a health service facility is a doctor, the person is taken to be a Designated Medical Officer while the person is in charge of the facility. The person in charge of a health service facility may, by written instrument, appoint a doctor to be a Designated Medical Officer if they have the necessary expertise or experience. | s.188 *Public Health Act 2005* |
| Guardianship | In accordance with the *Child Protection Act 1999*, a person who has, or is granted, guardianship of a child has the powers, rights and responsibilities to attend to:<br>• a child's daily care<br>• make decisions that relate to day-to-day matters concerning the child's daily care<br>• make decisions about the long-term care, welfare and development of the child in the same way a person has parental responsibility under the *Family Law Act 1975.* | *Child Protection Act 1999* |
| Harm | ***harm***, to a child, means any detrimental effect on the child's physical, psychological or emotional wellbeing—<br>a. that is of a significant nature; and<br>b. that has been caused by—<br>(i) physical, psychological or emotional abuse or neglect; or<br>(ii) sexual abuse or exploitation. | *s.158 Public Health Act 2005* |
| Health service facility | Means –<br>a. A public sector health service facility within the meaning of the *Hospital and Health Boards Act 2011*; or<br>b. A private health facility; or<br>c. Mater Misericordiae Public Hospitals | s.158 *Public Health Act 2005* |
| Medical examination | A medical examination is a physical, psychiatric, psychological or dental examination, assessment or procedure and includes forensic examination and an examination or assessment carried out by a health practitioner. | *Child Protection Act 1999* |

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| Parent | A parent of a child is –<br>(1) The child's mother, father or someone else having or exercising parental responsibility for the child; or<br>(2) The Chief Executive Child Safety Services, for a child who is in the custody or guardianship of the Chief Executive Child Safety Services under the *Child Protection Act 1999*<br>(3) a person in whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975* (Cwlth);<br>(4) a person, other than the chief executive, having custody or guardianship of the child under—<br>(i) a law of the State, other than this Act; or<br>(ii) a law of another State;<br>(5) a long-term guardian of the child.<br>The following also applies:<br>(1) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.<br>(2) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.<br>(3) A reference in this part to the parents of a child or to one of the parents of a child is, if the child has only one parent a reference to the parent. | *Ss.11;13;23 Child Protection Act 1999*<br>*S 159 Public Health Act 2005* |

# 8. Approval and implementation

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# Version control

| Version | Date | Prepared by | Comments |
|---|---|---|---|
| V1.0 | 01/04/2014 | Kyle Fogarty | |
| V1.0 | 07/04/2014 | Joanna Gurd | |
| V2.0 | 01/11/2014 | Sharon McDonald | Queensland Child Protection Reform |
| V3.0 | 11/12/2014 | Sharon McDonald | Consultation feedback incorporated |
| V4.0 | 01/05/2016 | Sharon McDonald | Periodic review |
| V4.1 | 01/05/2016 | Joanna Gurd | Final |
| V4.2 | 28/05/2018 | Joanna Gurd | Final and periodic review |