

CHAPTER 11-000

**SPECIFIC ISSUES FOR THE CHILDREN
IN THE CUSTODY OF THE DEPARTMENT**

Decisions regarding a child who is a ward residing with the parent should be made by the parent. The worker will intervene when a parental decision regarding a child who is a ward is likely to harm the family or child.

When a child is in out-of-home placement, the worker will involve at least the parent, foster parent and child in decision-making. Decisions are made in keeping with the best interest of the child, safety, case plan and the permanency goal.

When parental rights have been terminated or relinquished or the parent's whereabouts are unknown, or the parent chooses not to be involved, the Department is responsible for all decision-making based on the best interest of the child, safety, the case plan and the permanency goal.

11-001 DAILY CARE DECISIONS IN OUT-OF-HOME CARE PLACEMENTS

Foster care providers or residential staff will make decisions involved with the daily care of the child such as:

- personal hygiene,
- discipline (in accordance with Department policy), and
- family routines.

NOTE: Daily care decisions are always made in accordance with Department policies and guidelines and licensing requirements. Special conditions about daily care will be determined by the worker.

Certain decisions regarding care of children have potential implications to the cultural practices and religious beliefs of a family. To avoid violating a child and family's culture and religious beliefs, the Department will attempt to involve the parent in decisions about care of children. Routine care decisions having particular potential for cultural and religious implications are:

- haircutting and hair coloring,
- body piercing,
- tattoos,
- clothing
- dating,
- driver's license,
- cultural practices,
- religious or spiritual practices,
- photographs, and
- social and school activities.

Decisions will be made with respect for the cultural and religious beliefs of the child and family. The worker may consider the need for input from the guardian ad litem.

11-002 **SPECIFIC SENSITIVE ISSUES**

11-002.01 GENERAL ISSUES

11-002.01A ALCOHOL USAGE

Permission for children to consume alcohol will be given only if it is part of a formal, generally accepted religious ceremony.

11-002.01B CAR OR MOTORCYCLE PURCHASE

No Department employee will sign permission for purchase or use of a motorcycle for a ward or co-sign for the purchase of a car for a ward.

The worker, with parental consent and consent of the care giver, may approve the purchase of a car if the ward:

- Has a valid driver's license;
- Demonstrates maturity to handle the responsibility of motor vehicle ownership;
- Demonstrates a commitment to obey relevant laws and regulations;
- Has enough money to purchase license and insurance and maintain a car; and
- Has proof of insurance and maintains insurance.

A ward's guardianship account may be used for a car purchase only if it is required for school or employment.

NOTE: A ward's use of his/her vehicle may be restricted according to guidelines established by parent, worker and caregiver. A juvenile offender's use of his/her vehicle may be restricted through the Conditions of Liberty agreement.

11-002.01C

WARDS WHO HAVE CHILDREN

The Department has no authority over the child of a Department ward unless a court has taken jurisdiction over the ward's child and placed custody with the Department. The Department will offer education, guidance and support to the ward in making parenting decisions.

If a ward has a child living with her/him in a foster home, group home, or child-caring institution, the child of the ward may receive a foster care payment. If foster care payment is arranged, the child is then not eligible for Temporary Aid to Needy Families (TANF). The foster care payment can be paid directly to the provider or to the ward. Payment will be made to the ward unless s/he has shown s/he is not able to handle his/her money. If paid to the ward, the ward then is responsible to pay the placement provider for the child's living expenses. The foster care payment is the base rate of the Foster Care Payment Determination according to the child's age.

Note: Effective December 1, 1992 through June 30, 1995, the unborn child of a ward is eligible for a foster care payment beginning with the first day of the mother's third trimester of pregnancy.

A child of a ward will not be eligible for a foster care grant if the ward:

- Loses his/her eligibility for a foster care grant,
- Is living independently with her/his child, or
- Is separated from his/her child.

The worker will refer the ward to the income maintenance worker to determine if the ward's child is eligible for other programs through the Department.

If the ward who is a parent is placed at a YRTC, the ward needs to make appropriate arrangements for his/her child. If s/he is unable to do so, the county attorney or law enforcement will be contacted for possible action.

11-002.01D

DEATH OR IMMINENT DEATH OF A WARD

In the event of imminent or actual death of a ward, the worker will notify the following:

- The parent(s), when parental rights are intact;
- The court and all involved attorneys; and
- The supervisory staff, who will notify the Director.

11-002.01E DISCIPLINE OF CHILDREN IN OUT-OF-HOME PLACEMENT

The worker will inform out-of-home providers that the following must never be used for discipline of children:

- Denial of necessities;
- Chemical or mechanical restraints;
- Derogatory remarks, abusive profane language;
- Yelling, screaming or threats of physical punishment;
- Physical punishment of any kind - spanking, slapping, pinching, shaking, biting, etc;
- Striking with inanimate objects; and
- Rough handling.

Any violation of this policy will be reported to the local licensing staff and to the local child protective service staff immediately.

For children at a YRTC, physical, mechanical or chemical restraints or lock-up may be used by designated staff when deemed appropriate under YRTC policies.

11-002.01F DRIVER'S LICENSE

The worker, with consent of the parent and caregiver, may allow the child to obtain a license or permit. Driving is a privilege earned through showing responsibility.

The ward must complete a driver's education course before taking the driver's examination. If a driver's education course is unavailable, this requirement may be waived.

A condition of parole for children committed to HHS-OJS is that the child not operate or purchase any motor vehicle without written permission of the worker. If the child owns a vehicle before being on parole, the child cannot operate it without permission of the worker.

11-002.01G EMPLOYMENT

The worker may give approval for a ward to be employed.

The following factors will be taken into consideration:

1. The ward's desire to be employed;
2. Employment is part of the overall plan for the child;
3. The care providers and parent support the decision; and
4. Child labor laws are not violated.

11-002.01H FIREARMS AND OTHER LETHAL WEAPONS AND HUNTING

The worker will not permit children to maintain in their possession any type of firearm, rifle, shotgun, BB gun or any lethal weapon. Nebraska law states that it is "unlawful for any person under the age of 18 years to possess a pistol, revolver or any other form of short-barreled firearm." Neb. Rev. Stat. 28-1204(1).

A ward may be permitted to hunt within Nebraska, only when meeting the following conditions:

- Successfully completed an approved hunter's safety course and is 16 years of age or older;
- Has approval of the parent(s), worker and care giver(s);
- Has obtained a hunting permit; and
- Is properly supervised by the parent(s) or foster parent(s).

For juvenile offenders who obtain permission, this must be reflected in the Conditions of Liberty agreement.

The worker will evaluate the following in determining the appropriateness of the ward's taking a hunter's safety course:

- The ward's maturity and
- The ward's history of behavior, including any history of violence, assaults or improper use of firearms.

11-002.01I FUNERAL ARRANGEMENTS

The parent(s) is financially responsible to provide for the funeral. If the parent is not financially able to provide for the funeral expenses and burial, the expenses may be paid through state funds but must not exceed usual and customary charges or a referral may be made for county burial assistance. If parental rights are terminated or parent(s) cannot be located, supervisory staff will assist the worker in making the funeral arrangement. The following information will be provided to the mortician:

- Name of child,
- Location of child,
- Child's birthdate and place of birth,
- Date of death, and
- Parent's names.

If the child has a guardianship account, it will be used to defray the funeral and burial expenses. A headstone may be provided by the Department if no other funds are available.

11-002.01J FURLOUGHS FROM YRTC

Furloughs for youth at the YRTC will be part of the total case plan. Furloughs may be granted to prepare the child for re-entry into the community. The Juvenile Services Officer will determine when furloughs are appropriate in consultation with the YRTC staff, the parolee and the family.

11-002.01K

GUARDIANSHIP ACCOUNT

Funds from a ward's guardianship account will be used to meet the expenses of a child not covered through other funding sources such as private insurance and Medicaid. The Department will approve expenditure of guardianship funds for, but not limited to, the following:

- Clothing,
- School expenses,
- Expenses related to high school graduation,
- Special learning devices,
- Bicycles,
- Contact lenses,
- Orthodontic appliances,
- Other non-medically required items,
- The purchase of a car, if required for school attendance or employment, and
- Car insurance.

Funds from the guardianship account will not be used for:

- General spending money and
- The purchase of guns or other weapons.

When a ward is discharged from the Department, all funds held by the Department for a ward will be immediately transferred to one of the following:

- The Social Security Administration for disbursement to the appropriate party when SSI or RSDI benefits are involved;
- The ward when she/he is age 17 or older and is living independently of the parent;
- The ward's parent(s), if the ward is still a minor and is dependent upon her/his parent;
- The adoptive parent(s) in cases of adoption; and
- The guardian or conservator, if one has been appointed by the court.

(See Case Management Guidebook, Discharge of a Ward for procedures for authorizing guardianship fund.)

A youth committed to the YRTC receives funds to be used for his/her own personal needs. This is kept in a separate account. The youth receives the remaining money when s/he leaves the YRTC.

11-002.01L

ILLEGAL DRUGS OR USE OF ANOTHER INDIVIDUAL'S
PRESCRIPTION DRUGS

Under no circumstances will a child be permitted to use or possess another individual's prescription drugs or illegal drugs.

11-002.01M

LEISURE ACTIVITIES

Children on parole will be encouraged to participate in age appropriate leisure activities. When a child requests permission to participate in organized sports, the worker will consult with the parent and the child's physician. If the child's parent and physician and therapist, when involved, approve the child's request, the worker will give permission to participate. If the child's parent disapproves and the worker supports the child's request, the worker will contact the guardian ad litem for legal resolution. If the child's physician disapproves based on medical limitations, the worker will not give permission.

11-002.01N

MARRIAGE

The worker may grant a ward permission to marry after considering the following:

- The child is 17 years old or older;
- The ward's parent(s) (if parental rights are intact) and the court approve the plan; and
- The two parties demonstrate maturity and are able to financially support themselves.

Upon marriage, children adjudicated as abuse, neglect, dependent or status offenders are considered to be an adult and are discharged. (See 390 NAC 3-008, Ongoing Services, Case Evaluation and Case Closure.) Youth adjudicated as juvenile delinquents may remain on parole if they are married.

11-002.01O

MECHANICAL RESTRAINTS WITH JUVENILE OFFENDERS

Every juvenile offender apprehended and detained by a Juvenile Services Officer must be mechanically restrained through the use of wrist or leg restraints or both. This applies to transportation of the juvenile offender from the point of apprehension and detention to a detention facility or from a detention facility to a YRTC. A Juvenile Services Officer may also use restraints in transporting a juvenile offender under the following situations:

- To protect public safety,
- To prevent the child from injuring himself/herself or others, or
- To ensure the juvenile offender's presence.

The use of wrist or leg restraints or both is determined by the Juvenile Services Officer. These restraints will never be used as punishment and should not be applied for more time than is absolutely necessary. When possible, the need for restraints should be anticipated and assistance from law enforcement officers arranged.

11-002.01P

MILITARY SERVICE

The worker may grant a ward permission to enter the military service, after considering the following:

- The ward is age 17 or older;
- The ward's parent(s) (if parental rights are intact) and the court approve the plan; and
- The youth has demonstrated maturity to handle the responsibilities of military service.

Upon entrance into the military and completion of basic training, the child is discharged from the Department's responsibility. (See 390 NAC 3-008, Ongoing Services, Case Evaluation and Closure.)

Youth on parole cannot enter or enlist in the military unless discharged from HHS custody.

11-002.01Q

MONEY HANDLING

A worker will not act as a middle person in transmitting or transferring money from one party to another.

11-002.01R

RELEASE OF PHOTOGRAPHS AND IDENTIFYING INFORMATION

No photographs or slides of a Department ward or other identifying information regarding a Department ward may be released for use on posters, in presentations, press releases, or newsletters without the written consent of the worker.

The worker may grant release of photographs and identifying information after considering the following:

- Legal status of parental rights (if parental rights are intact, written parental consent must be obtained);
- The ward's opinions and wishes; and
- The use of the material (For example, if a child is identifiable, will it be detrimental to the child or his/her family). If a situation is questionable, the worker will not give consent.

11-002.01S

RELIGION

The Department will provide reasonable opportunities for a child in out-of-home care to maintain his/her religious beliefs and practices. The following will be used as guidelines in providing reasonable opportunities:

- The child's religion is assumed to be that of his/her parent unless the family indicates otherwise.
- The child's religious beliefs will be respected by the out-of-home care providers. This includes providing reasonable opportunities for the child to practice his/her religious beliefs and honor religious dietary practices, if applicable.
- The foster care provider will not require the child to practice the foster care provider's faith (that is, be baptized, receive communion, be confirmed, witness or go to confession).
- The foster care provider may require the child to attend a place of worship with the family. If the child's family, the child or the worker sees this as interfering with the child's practice of his/her religion, other arrangements must be made.
- If the child wishes to change his/her religious faith or practice to the foster care provider's religion, parental permission is required unless the parent(s) is unavailable. If parental rights have been terminated, the worker may authorize a change in the child's religion based on the child's best interest.

The worker will consult with others if the child is involved in any religious practice which may constitute a danger to himself/herself or others. The consultation will determine appropriate ways to best serve the child.

11-002.01T

RUNAWAYS

When a child is determined to have run away, the worker will take the necessary steps to locate and recover the child. The worker will notify law enforcement and the parent and provider, if the child is placed out of the home, as soon as possible. (See Case Management Guidebook, Specific Issues for process.)

When the child is located, the worker should determine the child's current status and future placement and services. (See Guidebook for practice.)

11-002.01U

TOBACCO

Use of tobacco by children in the care of the Department is discouraged not only because of the law prohibiting sale of tobacco to persons age 17 or younger but also because of the serious health hazard that tobacco use presents. The Department staff will not give permission to use, purchase or provide tobacco products for children age 17 or younger.

11-002.01V

TRAVEL

When a child in out-of-home placement will be leaving the State of Nebraska for more than 72 hours, the parent(s), will be notified of the child's travel plans before departure. If the child will be leaving the State of Nebraska for a substantial period of time, the court or guardian ad litem will be notified of the child's travel plans before the child's departure. If the parent(s) disapproves and the worker supports the travel plans, the worker will contact the guardian ad litem for legal resolution.

All travel will be supervised by the foster parent or responsible adult if travel is a part of an approved activity. The worker will have access to an itinerary of the child's travel including a means of contacting for emergencies, if at all possible.

Juvenile offenders will not leave the state of their residence without written permission of the worker. Juvenile offenders need parental permission to leave the county of their residence.

11-002.02

EDUCATIONAL ISSUES

11-002.02A

NOTIFICATION TO SCHOOL DISTRICTS

Department staff will send written notification to the school district where the child resides within seven days of each of the following situations:

- When a child becomes a ward of the Department (whether removed from the home or not);
- When a child enters a new school district;
- If a child's parents' rights are terminated or relinquished;
- The court dismisses HHS custody;
- The child is adopted;
- A parent who was absent returns; and
- A child who was a ward turns 19 years old.

This applies to pre-school and school age children. See Out of Home Care Guidebook for form letter for notification to school district where the child resides.

11-002.02B APPOINTMENT OF EDUCATIONAL ADVOCATE (SURROGATE PARENT)

The Individual with Disabilities Education Act established special education rights for children with developmental disabilities. These include the appointment of a surrogate parent by school districts when the child is a ward of the Department. The school district determines whether a surrogate parent needs to be appointed or not. A Department employee will not serve as the surrogate parent. Parents who retain and exercise the authority to make decisions regarding their child's education should be allowed to exercise those rights.

Department staff will provide written information to use in deciding to appoint a surrogate parent. The form letter to the school superintendent will provide this information and will be sent under conditions described in 11-002.02A. See Out of Home Care Guidebook for form letter.

11-002.02C DISCIPLINE OF CHILDREN BY SCHOOL PERSONNEL

If a public school official in Nebraska has used corporal punishment on a child, the worker will immediately report the incident to law enforcement.

Nebraska statute prohibits corporal punishment in public schools. Neb. Rev. Stat. 28-1413.

The school official may be charged with violating Neb. Rev. Stat. 28-924, which prohibits a public servant from violating state law. The official may also be charged with assault.

If a child attends a private or public school outside of Nebraska, permission will not be given for the use of corporal punishment on a child.

11-002.02D EDUCATIONAL PLACEMENT IN NON-PUBLIC SCHOOL SETTING

Department wards generally will receive educational programs through public school systems. However, educational placements in a non-public school (including "Rule 13 Schools" and approved or accredited private or parochial schools) may be considered upon the request of the parent, at parental expense and with no cost to the Department.

Guidelines:

Placement in a non-public approved or accredited school may be approved by the worker when:

- The school placement is requested by a parent whose rights are intact (If parental rights are terminated the school placement is consistent with the case plan.);
- The parent supports the school placement financially and there is no cost to the Department;
- The school can provide for the child's special educational needs, if any.

Placement in a "Rule 13 School" may be approved only when:

1. The school placement is requested by a parent whose parental rights are intact and the goal is reunification;
2. The parent signs a statement that she/he believes that the requirements for school approval and accreditation violate her/his religious beliefs;
3. The parent supports the school placement financially; and
4. The county superintendent states in writing that the school can meet the child's educational needs; the worker concurs with this assessment. The worker may obtain an independent assessment or consultation to determine if the placement is appropriate.

If parental rights are not intact, the ward will not be able to attend a "Rule 13 School" because the second requirement cannot be met.

Note: "Rule 13" school work may not be transferable or acceptable to a public school college or vocational school.

References: Nebraska Department of Education, Title 92, Chapter 13, "Rule 13".

11-002.03

LEGAL ISSUES

11-002.03A APPREHENSION AND DETENTION OF JUVENILE OFFENDERS

Designated staff of HHS may apprehend and detain children committed to HHS-OJS as juvenile offenders. All staff doing this action must be trained in apprehension and detention practices. A Juvenile Services Officer will try to resolve issues with the juvenile offender and family before a juvenile is apprehended and detained. If this is not successful, the worker will consult with the supervisor. If it is concluded that an apprehension and detention is needed, trained workers should do the apprehension and detention using law enforcement personnel when the safety of the worker or the public may be endangered. Restraint equipment should be available for use in all apprehension and detention situations. (See 390 NAC 11-002.01O for use of mechanical restraints.)

11-002.03B

BAIL OR PAYMENT OF FINES

For Children Adjudicated as Abuse, Neglect, Dependent or Status Offender

Bail or legally assessed fines may be paid from the ward's own guardianship account. When the ward has no funds in an account, the worker will first contact the parents to arrange payment. If the parent(s) is unable to arrange payment, the worker will then consult with supervisory staff or team to resolve the issue.

In cases where the Department pays a fine or posts bail, a repayment plan will be established with the child. Repayment by the ward can come from employment or by doing volunteer work.

For Children Adjudicated as Delinquent

The Department will not post bail for children adjudicated as delinquent. Payment of fines by these children will be addressed in the case plan.

11-002.03C CRIMINAL ACTIVITY BY CHILDREN WHO ARE WARDS

Workers should cooperate with law enforcement officials when the latter are trying to detect and apprehend children who are wards known to be or suspected of being involved in law violations. If workers have definite information which might assist law enforcement, they should provide such facts to the appropriate authorities.

11-002.03D NAME CHANGE

The worker may consent to changing a child's name if it is in the best interest of the child. The parent(s) will be consulted if parental rights are intact. Parent(s)' wishes will be strongly considered. If reunification is the plan, the parent(s) approval must be obtained.

11-002.03D LAW ENFORCEMENT OPERATIVES

Children who are wards will not be allowed to act as law enforcement operatives.

11-002.03F SEARCHES AND SEIZURE

Juvenile Services Officer may search a juvenile offender and his/her surroundings when there is reasonable cause to believe the juvenile offender is in violation of his/her Conditions of Liberty Agreement or in possession of contraband. Whenever possible the Juvenile Services Officer will consult with his/her supervisor before any search. Before searching surrounding property for weapons, drugs, drug paraphernalia and other contraband, the Juvenile Services Officer will obtain permission from the parent or owner of the property for entry and search. If permission is not given, the worker will contact law enforcement to proceed with obtaining a warrant. The Juvenile Service Officer may seize evidence of a parole violation, law violation or contraband. If a juvenile is living independently, the juvenile can consent to the search of the living premises. (See Case Management for Juvenile Offenders and Status Offenders Guidebook for details.)

11-002.04 MEDICAL ISSUES

11-002.04A ABORTION

A female ward has the right to obtain a legal abortion. The decision to obtain an abortion is the ward's. The child's worker will provide unbiased information to the ward regarding alternatives and appropriate agencies and resources for further assistance. The worker will not encourage, discourage, or act to prevent or require the abortion.

If a ward decides to have an abortion, the consent of the parent(s) or Department is not required, but notification may be required unless the conditions listed below exist.

The decision to tell or not to tell the ward's parent is made by the ward. If the ward decides not to tell her parents, the worker will honor that request. When parental rights are intact and the ward decides to tell her/his parent(s), the worker will help the ward inform her parent(s) of her decision.

Since there may be circumstances under which the worker needs to release information (e.g. medical complications), the worker will inform the ward that her/his decision may not remain confidential.

Nebraska law also requires women seeking abortions to be given informed consent 24 hours before the abortion is to be performed, except in an emergency.

Abortions may be funded through the Department's Medical Assistance Program only in cases where the life of the mother will be endangered if the fetus is carried to term.

NOTE: Under Nebraska law, written notification by the physician or the physician's agent to the parent is required 48 hours before the abortion is required for teens age 17 or younger. Notification IS NOT required if:

1. The attending physician certifies in writing in the pregnant ward's medical record that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant ward AND there is sufficient time to provide the required notification;
2. The abortion is authorized in writing by the parent or guardian (other than the Department) who is entitled to notification;
3. The pregnant ward declares that she is a victim of abuse, neglect or sexual abuse, in which case, notice of her declaration must be provided to the department or law enforcement as required by Neb. Rev. Stat. 28-7111; and
4. A judicial parental notification waiver is obtained from a juvenile, county or district court judge.

Nebraska law establishes time limits on this decision stating, "No abortion shall be performed after the time at which, in the sound medical judgment of the attending physician, the unborn child clearly appears to have reached viability, except when necessary to preserve the life or health of the mother."

Statutory references: Neb. Rev. Stat. 71-6901 et seq.
Neb. Rev. Stat. 28-329.

11-002.04B

AUTOPSY

Because the Department's guardianship terminates at the time of the child's death, the Department will not give consent to autopsy after a child's death. The child's parent(s) may then give consent. If parental rights are terminated, any consent for an autopsy will be given by the physicians in the Health and Human Services System.

11-002.04C BIRTH CONTROL, FAMILY PLANNING AND SEX EDUCATION

The worker will:

- Arrange for birth control counseling or refer for birth control all age-and-behavior-appropriate male and female wards. (The U.S. Supreme Court has ruled the State cannot deny minors from obtaining contraceptives without parental consent).
- Take into consideration the child's and parent's request for services consistent with their respective religious beliefs.
- Permit the ward treatment for venereal disease without parental consent as outlined in Nebraska Statutes 71-1121, R.R.S., 1986.
- Ensure that education regarding sexuality, birth control and family planning services are part of an overall plan leading to adult responsibility.

11-002.04D

HIV/AIDS

To protect children from discrimination as a result of being tested for the human immunodeficiency virus (HIV), the decision to test a child for the HIV antibody will be carefully made on an individual basis. It is the role of the worker to give written informed consent when a child's situation meets the conditions in the protocols in the Case Management Guidebook, Specific Issues section. A child will not be tested for HIV unless there is a reasonable cause to believe the child has been exposed to the virus. Children may be tested either through an approved Counseling, Testing, Referral and Partner Notification Site (CTRPNS) or through the child's medical care provider, depending on the individual child's situation per the procedures outlined in the guidebook. Informed consent is required for all HIV and AIDS testing.

To preserve confidentiality, an HHS approved CTRPNS will be used whenever possible, particularly for older youth who engage in risk behaviors. These sites provide for the greatest degree of confidentiality as well as appropriate pre- and post-test counseling regarding the child's risk behaviors.

The Interagency Agreement on HIV/AIDS counseling and testing will guide decision-making for children with this condition. (See protocol in Guidelines for Decision-Making in Case Management Guidebook.)

The following four situations should guide decision making for informed consent by the Department for HIV testing:

1. **Medical Testing:** When a child has medical symptoms, with or without other identified risks of HIV exposure, and when a medical provider asks for informed consent to test the child because of these medical indications, it is appropriate for the worker to give informed consent for the child to be tested in a hospital or clinic as part of the medical evaluation. Even though the testing is done by a medical provider and will become part of the child's medical record, the use of the CTRPNS for counseling services for older children regarding their risk behaviors should be considered and encouraged.

HHS staff should give informed consent for HIV testing for medical reasons in the following situations:

- a. The child has hemophilia;
 - b. The child is an infant born to a mother known to be HIV antibody positive; that is, has AIDS, has HIV disease, or is known to be an HIV carrier;
 - c. The child is an infant under three years of age who was born to a mother known to be at risk for HIV infection but whose HIV status is unknown and cannot be determined either through her medical record or through current testing. Behaviors that may put the mother at risk for HIV infection include: use of injectable drugs, engaging in sex for money, having multiple sex partners, etc.;
 - d. The child has medical signs or symptoms which are suggestive of an HIV related illness;
 - e. The child is pregnant. (HIV testing during pregnancy is recommended for all women. In addition, pregnant youth should be encouraged to visit the CTRPNS for appropriate pre and post test counseling.)
2. Children's Behaviors. Older children who engage in behaviors that put them at risk for HIV infection (for example, multiple sex partners, sex for money, and use of injectable drugs) should be individually evaluated. The use of the Counseling, Testing and Partner Notification Sites should be strongly considered not only for the testing but more importantly for the pre and post test counseling which is available. (Using the Counseling, Testing and Partner Notification Sites protects the child's confidentiality, which is a very important consideration for children who are wards.)
 3. Exposure to Child's Blood. Health care facilities are required to have policies in place to protect their health care workers. These policies are governed by OSHA regulations and by state statutes. When a health care worker has accidentally been exposed to blood or other potentially infectious body fluids of a state ward, the facility will contact the worker per their policies to request informed consent for HIV testing of the ward. Such events include the accidental exposure of blood to a health care worker's non-intact skin, mucus membranes, or subcutaneous tissue such as through a needle stick injury. The worker should establish that the medical facility has a policy addressing procedures for accidental exposure to blood that meet both OSHA requirements and state statute requirements 1) for getting informed consent for testing from the child's legal guardian; 2) for ensuring that the fact of HIV testing and the results of the testing are kept confidential and do not become part of the patient's medical record; 3) for ensuring that the HHS caseworker for the ward is given the results of the HIV testing. If these conditions are met, the worker should give informed consent as soon as possible after the exposure to allow the health care worker to be treated with a preventive course of medication. The caseworker may seek consultation from an HHS physician at any time.
 4. Forensic Issues. Any information related to HIV infection that may be needed in a court of law (for example, prosecution for child abuse) must be obtained through the regular medical delivery system. Information from CTPNS cannot be used for forensic purposes because it is confidential under the law.

Results of Testing

If a child tests positive for HIV in any of the above four situations, the child will be immediately referred to an appropriate provider for further medical evaluation and treatment. The child will be provided with age appropriate counseling and support to assist him/her in emotionally and physically dealing with the condition. The child's parents, foster parents, or immediate caregiver and the child's guardian ad litem will be advised of the child's condition and course of treatment.

11-002.04E GENERAL INFORMED CONSENT FOR MEDICAL DIAGNOSIS AND TREATMENT

It is the responsibility of the worker to talk to providers of mental health, substance abuse and medical services to obtain information about the risks and benefits of treatment in order to give informed consent. Informed consent is sometimes given verbally but a written signature may be required. The worker should involve the parent(s), Guardian ad litem, county attorney and the judge, as appropriate. The worker may seek consultation from physicians within the HHS System.

(See Case Management and Case Management for Juvenile Offenders and Status Offenders Guidebooks, Conflict Resolution for guidelines if there is a disagreement about treatment.)

11-002.04F MEDICAL DECISION MAKING

When the Department is guardian of a child resulting from court action or voluntary relinquishment, the Department is legally authorized to make all decisions regarding medical treatment while recognizing the importance of parental involvement in decision making. The worker is responsible for such decisions but will involve the parents (when parental rights are intact) to the maximum extent possible. The worker may give the foster care provider or contracted residential facilities consent to obtain emergency or routine medical treatment. Exception: permission for HIV antibody testing or other screening tests for AIDS must follow established Department policy and protocol.

11-002.04G ORGAN DONATIONS

If the death of a ward is imminent, the hospital where the ward is located is responsible for seeing and following through with requests for organ donations. If parental rights are not intact, the worker will consent to an organ donation after consulting with the medical director of the Department and consultation with supervisory staff, Guardian ad litem and the court. If parental rights are intact, consult the above along with the parents.

11-002.04H STERILIZATION

Children and youth who are wards of the Department will not be sterilized. If a medical procedure that may or will result in sterilization is medically necessary for reasons other than sterilization, the worker may consent after consulting with the supervisor or team, the parent(s), guardian ad litem, court, physicians and legal staff in the HHS System.

11-002.04I WITHHOLDING OR WITHDRAWAL OF LIFE SUPPORT

HHS does not request that a physician order the withholding or withdrawal of life supports from a terminally ill ward.

However, when a physician recommends and requests informed consent for the withholding or withdrawal of life supports from a state ward, the following process shall be used to decide whether such consent will be given:

The Director of the Department is responsible for making the decision to withdraw or withhold life support from a terminally ill ward. The decision will be reviewed in light of the child's neurological devastation or proximal death or both. The Director will have input from a central office team consisting of one of the HHS physicians, legal counsel, and a CPS program specialist and from the local office team consisting of the child's parents (when parental rights are intact), the child's worker, the guardian ad litem, and the District Administrator.

Department legal counsel will be contacted for any legal action necessary.

When a request to withdraw or withhold life support is made, the worker will instruct the medical providers to continue life support pending a decision by the director. The worker in conjunction with the central office team will then be responsible to collect relevant information for the Director's decision, including letters from the child's attending physicians and a report from the hospital ethics committee.

If a decision is made to give such informed consent, all parties will be notified in writing that HHS intends to give such consent within a stated period of time. "All parties" means the parents or their attorneys if they are represented by legal counsel, the guardian ad litem, the county attorney and the judge. Informed consent will be given to the medical provider in writing.

If a decision is made not to give informed consent, the medical provider will be notified in writing by the Director.

11-002.04J PARENTAL OBJECTIONS TO MEDICAL CARE AND TREATMENT

If a parent objects to medical treatment, the worker and parent should gather information and seek medical advice or evidence of need for treatment. If the parent still objects but the worker's assessment indicates the need for medical care and treatment, the worker will consult with the supervisor. The supervisor and worker should involve the physicians or lawyers or both within the HHS System.

The parent, whose rights are intact, will be advised of the recommended medical care that the HHS staff believe should be done. If the parent still disagrees, then:

1. For low risk situations, the worker will discuss the issue with the guardian ad litem and give consent; and
2. For high-risk situations, the worker will involve the guardian ad litem, county attorney and judge as appropriate.

11-002.04K PARTICIPATION IN MEDICAL RESEARCH PROJECTS

Department staff will not give permission for Department wards to participate in medical research because of the complicated legal and ethical ramifications of the practice. **EXCEPTION:** An exception may be granted if a ward would receive direct treatment or therapy that might benefit the ward. An example of this is a terminally ill child with a rare cancer for which there is no known treatment but for which there is a treatment protocol involving experimental subjects. In this type of situation, the protocol will be evaluated by staff in the Medical and Legal Divisions of the HHS System. The child, parents, guardian ad litem and judge must be consulted. The decision should be made jointly.