



**STATE OF DELAWARE**

**PROTOCOL FOR DE-ESCALATION OF LIFE SUPPORT  
FOR CHILDREN IN THE CUSTODY OF THE  
DEPARTMENT OF SERVICES FOR CHILDREN,  
YOUTH, AND THEIR FAMILIES**

**Prepared by:  
The De-Escalation of Life Support Workgroup  
of the  
Child Protection Accountability Commission**

## **I. Application of Protocol**

This protocol shall be followed for any child in the custody of the Department of Services for Children, Youth, and their Families (DSCYF) for whom a recommendation to de-escalate or limit care<sup>1</sup> is made by the child's medical providers. This protocol shall apply even if an adjudication of dependency, neglect, or abuse has not yet been made and also after parents' rights have been terminated.

## **II. Initial Communication/Investigation in Early Stages of Case**

### **A. Communication During DFS Investigation**

1. Hospital staff should contact the hospital's risk management department as soon as a child presents with life-threatening injuries that are suspicious for abuse.
2. When making a hotline referral to the Division of Family Services (DFS) for a seriously injured child where non-accidental trauma is suspected, the reporting hospital should be sure to include details concerning the following:
  - i. Suspicion of non-accidental trauma
  - ii. Severity of the injury and need for immediate medical decisions
  - iii. Complicating factors, such as parental substance abuse or domestic violence
  - iv. Parental cooperation and behavior, such as demeanor and interaction with the child
  - v. Whether the police have been contacted.
3. The hospital should also contact the police if abuse is suspected.
4. When responding to a hotline report alleging serious physical injury to a child who is admitted to a hospital, DFS will evaluate the child's safety as if he or she were at home in the care of the parents.
5. After the initial contact with the child, the DFS worker will consult with the Deputy Attorney General (DAG) concerning course of action.

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<sup>1</sup> Limitation of care may include, but is not limited to, the entry of "do not re-intubate" and "do not resuscitate" orders on a child's medical chart.

6. During investigation, the point of contact for DFS will be the assigned worker or his or her supervisor. The point of contact for the hospital will be the hospital's social work department.
7. New or ongoing concerns of hospital staff should be relayed to the DFS contact, who will update the DAG with significant information.
8. If there is a perceived disconnect between hospital staff and DFS, counsel for the hospital and the DAG should communicate directly with one another.

<b>Action</b>	<b>Responsible Party</b>
Contact the hospital's risk management department	Hospital Staff
Make a hotline referral with key information	Hospital Staff
Contact the police	Hospital Staff
Make contact with the child, assess safety, and consult with DAG	DFS Investigation Worker
Relay new or ongoing concerns to DFS	Hospital Social Worker
Communicate if there is a perceived disconnect between hospital staff and DFS	Hospital Counsel and DAG

#### B. Communication After DSCYF Obtains Custody

1. Once DSCYF has obtained legal custody of a child and a recommendation to de-escalate care is made by the treating physicians, a family meeting should be held, to include at least one treating physician from each discipline treating the child and other hospital representatives who contributed to the recommendation, the parents, the parents' attorneys, the DFS worker, the DAG for DFS, and the Child Attorney.
2. DFS will be responsible for contacting the other parties and counsel to arrange the family meeting after the hospital has communicated its recommendation to DFS.
3. The purpose of this meeting is for all parties to receive the same information at the same time about the child's condition, prognosis, and the

recommendation to de-escalate care. The medical team will communicate the timeframe in which a decision needs to be made.

4. All persons involved will be provided a list of team members to clarify roles.

Action	Responsible Party
Communicate recommendation to de-escalate to DFS	Hospital Social Worker
Arrange a family meeting including at least one treating physician from each discipline treating the child, other hospital representatives who contributed to the recommendation to de-escalate, the parents, the parents' attorneys, the DFS worker, the DAG for DFS, and the child's attorney	Hospital and DFS Worker
Communicate to the parties the timeframe in which a decision to de-escalate or limit care needs to be made	Medical Professionals

### III. Court Action

#### A. Before Adjudication

The Court cannot rule on a Motion for De-Escalation or Limitation of Care until after an Adjudicatory Hearing has been held and the child has been adjudicated dependent, neglected, or abused in the parents' care. Prior to such adjudication, cases should be handled as follows:

1. The family meeting described in section II(B) should still occur with all team members invited.
2. An Adjudicatory Hearing should be held as early as possible if it appears that important medical decisions will need to be made on the child's behalf, and should be consolidated with the Motion for De-Escalation or Limitation of Care if necessary. Communication among the attorneys and with the Court is crucial for the timely scheduling of hearings. See subsection C below for more information.
3. Medical records, DFS internal records, and any other necessary records should be obtained and distributed as quickly as possible so an expedited Adjudicatory Hearing may be held. Requests for medical records from AI, on duplicate compact discs, should be sent to the social worker for the CARE Program for expedited handling.

4. If a decision **must** be made prior to adjudication, the medical team must proceed as it sees fit, with the parents retaining the right to make the decision.

Action	Responsible Party
Request that Adjudicatory Hearing be scheduled as early as possible	DAG or Child Attorney
Request consolidation of Adjudicatory Hearing with Motion if necessary	Attorney Filing the Motion
Communicate between counsel and the Court regarding urgent matters and timely scheduling	All Attorneys and Family Court
Obtain and distribute medical records, DFS records, and any other necessary records as quickly as possible	DAG or Child Attorney

#### B. After Adjudication

Once an adjudication of dependency, neglect, or abuse has been made by the Court, cases should be handled as follows:

1. All parties (parents, DFS, and Child Attorney) agree that de-escalation or limitation of care is in the child's best interest.

In cases where all parties are in agreement with the medical recommendation, a stipulation should still be filed with the Court, pursuant to the *Truselo* decision. The rationale is that ending the life of a child is a serious and permanent decision, and when DSCYF has custody of a child for any reason, the Court should review such a decision first in furtherance of its duty of *parens patriae*, to ensure the decision is in the best interest of the child.

2. Parents do not agree to de-escalation or limitation of care, the decision is reasonable after active participation in an informed consent conversation with the doctors, and the parents are not suspected of having caused the injuries (child is dependent or neglected in parents' care on other grounds).

In these cases, the parents should have the right to make the decision, and the hospital should notify DFS and Child Attorney of the decision but should proceed with necessary medical procedures without delay or Court involvement.

3. Parents do not agree to de-escalation or limitation of care but decision is not reasonable or the parents are suspected of having caused the injuries.

In these cases, the hospital should notify DFS and the Child Attorney and wait to perform any medical procedures. These cases will generally result in the Child Attorney filing a motion for de-escalation or limitation of care with the Family Court.

4. One parent agrees and one parent disagrees.

If the parents disagree with each other, a motion for de-escalation or limitation of care should be filed by the parent's attorney or the Child Attorney, or jointly.

C. Filing the Motion

1. In most cases, the Child Attorney will be the one to file a motion to de-escalate or limit care when such motion is needed.
2. The attorney filing the motion should make the other attorneys aware the motion will be coming.
3. Medical records should be distributed to all attorneys as soon as possible if they have not already been shared.
4. The attorney filing the motion should consult with the medical team to determine if the motion should be filed on an emergency basis, which requires a finding of immediate and irreparable harm.
5. The attorney filing the motion should consult with the medical team, including the hospital's counsel, to ensure the motion and draft order clearly indicate the appropriate relief.
6. If counsel has not yet been appointed for a parent, the motion should include a request that the Court provisionally appoint counsel for the parent, and records should be sent to the attorney anticipated to be appointed.
7. The attorney filing the motion should request that the Adjudicatory Hearing and a hearing on the motion be consolidated if necessary.
8. The Court should hold a scheduling conference as soon as possible to schedule a hearing on the motion, as well as an Adjudicatory Hearing if needed. In addition, the conference should address scheduling for production of medical records and other documents, production of independent medical evaluation report if requested, any related motions, such as motions for telephone testimony, and any other issues that need to be addressed prior to the hearing.
9. The Family Court should endeavor to hear cases as quickly as possible, issue decisions as quickly as possible, and, if multiple days are needed for a single hearing, schedule hearings as closely in time as possible.

<b>Action</b>	<b>Responsible Party</b>
Advise other attorneys that a motion to de-escalate will be filed	Attorney Filing the Motion
Distribute medical records to all attorneys	DAG and Child Attorney
Consult with medical team to determine if the motion should be filed on an emergency basis	Attorney Filing the Motion
Consult with medical team to ensure the motion and draft order clearly indicate the appropriate relief	Attorney Filing the Motion
File the motion to de-escalate or limit care	Child Attorney or Parent Attorney (if Disagreement Between Parents)
If not yet appointed, request that the Court provisionally appoint counsel for the parent and allow records to be shared with appointed counsel	Attorney Filing the Motion
Request that the Adjudicatory Hearing and the hearing on the motion to de-escalate care be consolidated if necessary	Child Attorney or Attorney Filing the Motion
Schedule and conduct a scheduling conference	Family Court
Make efforts to schedule a hearing as quickly as possible, issue a decision as quickly as possible, and schedule multi-day hearings as close together as possible	Family Court

#### D. Medical Testimony

1. Live testimony by medical professionals is preferred, and the attorneys should make every effort to allow for live testimony.
2. If either phone or video testimony are approved, the witness and counsel should all be provided with a packet of records with distinctly numbered pages that the witness may rely on.

<b>Action</b>	<b>Responsible Party</b>
Provide a packet of numbered documents to physician and counsel if doctor is testifying by phone or video	Child Attorney

E. Independent Medical Evaluation

1. If parents are not opposed to de-escalation of care or no one is specifically requesting an independent evaluation, then one need not be sought or performed.
2. When the Family Court is in need of an independent medical evaluation to issue a fully informed order, the Family Court should order that such an opinion is required and cover the cost of the evaluation.
3. When the Family Court has sufficient evidence to make a decision without an independent medical evaluation, but a party is requesting one, best practice is to have an independent medical evaluation performed if possible.
4. Unless the Family Court is requiring an independent medical evaluation, as stated above, the Family Court should be careful not to state that such an evaluation is “required,” but that it will afford the parties an opportunity to obtain a second opinion.
5. The Family Court should place time limits on locating an independent doctor and production of the report. This should be addressed at the scheduling conference. Two weeks is the suggested timeframe to locate a doctor willing to perform the evaluation.
6. An indigent party seeking reimbursement for the independent evaluation shall file a motion for payment of fees, prior to any charges being incurred, and the Family Court will typically be amenable to paying the reasonable cost of the evaluation.
7. If necessary, the parties can discuss whether or not a stipulation affording protections to the doctor performing the independent evaluation is appropriate.

Action	Responsible Party
Order an independent medical evaluation if necessary to make a fully informed decision	Family Court
Request an independent medical evaluation if the Court does not order one and parents oppose de-escalation, if the parents request one	Parents’ Counsel
Set a time limit for locating a doctor to perform the independent medical evaluation and producing a report	Family Court
Identify a physician to perform independent medical evaluation	Everyone
File a motion for payment of fees for independent medical evaluation, prior to any charges being incurred	Parents’ Counsel



F. Appeal

1. As a professional courtesy, if any party intends to take an appeal from the Court's decision on a motion to de-escalate or limit care, that party's attorney should promptly notify the other attorneys that they will be appealing.
2. If appealing, the appellant shall file an application for certification of an interlocutory appeal with the Family Court in accordance with Supreme Court Rule 42, keeping in mind that such an application must be filed within ten days of entry of the Family Court's order.
3. During the pendency of an appeal, a Motion for Stay of the Court's Order will need to be filed in Family Court.
4. The Appellant should file a request with the Supreme Court for the appeal to be expedited. If the Appellant does not file such a request, DFS or the Child Attorney should.
5. If deemed necessary, the parties do have the ability to file a request for oral argument with the Supreme Court. Granting the request is within the Supreme Court's discretion.
6. Should the child's status change during the pendency of an appeal, all counsel should err on the side of disclosure to avoid the possibility of withholding potentially relevant information from the Supreme Court.
7. Communication between the medical team and counsel remains crucial during the appeal process.

Action	Responsible Party
Notify all counsel of appeal	Counsel for party taking appeal
File an application for certification of an interlocutory appeal with the Family Court within 10 days of entry of Family Court's order	Counsel for party taking appeal
Address any interlocutory appeal that is taken	Family Court
File a motion for stay of execution of Family Court's order	Counsel for party taking appeal
File a request with the Supreme Court for the appeal to be expedited	Counsel for party taking appeal, or Child's Attorney if necessary
Disclose to the Supreme Court any change in the child's status during the pendency of an appeal	All counsel in coordination

**IV. Implementation of Order (if De-Escalation is Ordered) and Aftermath**

- A. Within 3 days of receipt of a final order de-escalating care, a brief conference or teleconference should be held, including hospital staff, DFS, counsel for DFS, counsel for the child, and counsel for parents, to discuss implementation of the order and the plan after the child passes away. This initial meeting should not include the parents as it will be largely logistical.
- B. After this meeting, a brief meeting with hospital staff, DFS, and the parents should occur to discuss implementation of the order, the parents’ opportunity to spend time with the child (if appropriate), and arrangements after the child passes.
- C. For the child’s remains to be removed from the hospital, a parent or legal guardian must provide consent to the hospital to release the child’s body to a funeral home, so this should be discussed as well.
- D. After the child passes, the Child Attorney should be in communication with counsel for the parents about funeral arrangements to ensure that the parents are included as appropriate. The Child Attorney should also apply for funeral expenses through the Victim Services Assistance Program where appropriate.

<b>Action</b>	<b>Responsible Party</b>
Within 3 days of receipt of the final order, set up a brief conference or teleconference between hospital staff, DFS, counsel for DFS, the child’s attorney, and counsel for parents to discuss implementation of the order	DFS Worker
After the first meeting, set up a brief meeting with hospital staff, DFS and the parents to discuss implementation of the order, the parents’ opportunity to spend time with the child (if appropriate), and arrangements after the child passes	DFS Worker
Communicate with parents’ counsel about funeral arrangements to make sure the parents are appropriately included	Child’s Attorney