

## IMPORTANT

- The information we provide on our rights4children website is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: [info@article39.org.uk](mailto:info@article39.org.uk)

## Staying fit and healthy

- + Your right to health is about your body and mind working in the best way possible – for you.



Here's 6 things we think you definitely cannot be healthy without:

Exercise, Food, Love, Respect, Shelter, Water.

Would you add anything to this list?

We've put the 6 things in alphabetical order. Is it even possible to put them in order of priority?

## Your rights – general

Your council and the Secretary of State for Health must take action to encourage the health of everyone who lives in England.<sup>1</sup>

The Secretary of State for Health is also under a duty to work on reducing inequalities between people who use health services.<sup>2</sup> These inequalities are differences in how fit and healthy you are. They can be linked to money and where we live, age, being male or female, being disabled or our ethnic origin. They can also be linked to being in care or prison.

Inequalities in health are not fair. That is why the law says the government should try and reduce them.

At school, your education should help you develop in all sorts of ways. It must prepare you for later life.<sup>3</sup> Being healthy is obviously a big part of this. Your school should give you education about health (this is part of Personal, Social, Health and Economic Education – called PSHE for short).<sup>4</sup>

You have the right to free health care, which means you don't have to pay when you see a doctor, a nurse, a dentist or an optician, or when you go into hospital.

Everyone who lives in a group setting, including immigration detention, has the right to free health care.

If you ever have to go into hospital because of mental health reasons, you must be looked after in a way that's suitable to your age.<sup>5</sup> This means you shouldn't be treated like an adult.

If you are not happy about your health care, you have the right to get help from an independent advocate.<sup>6</sup>

You have the right to free eye tests and glasses if you need them up to the age of 18 if you are studying.<sup>7</sup>

You have the right to free dental care up to the age of 18, and 19 if you are studying.<sup>8</sup>

### **Giving your permission**

If you are aged 16 or above, you have the right to consent to health care and treatment.<sup>9</sup> This means the treatment cannot go ahead unless you agree. Below the age of 16, your right to give consent depends on your understanding of the health decision that has to be made, and your understanding of what could happen if you decide to go ahead with treatment, or refuse it.

The United Nations Convention on the Rights of the Child gives you a human right to health. It says the government must understand you have the right to be as healthy as possible. It says the government should do its best to make sure every child gets health care.

## Your rights – extra

This section gives you information about your extra rights in different places.

Words in “quotation marks” come from laws and legal rules. Laws and legal rules must be followed by the people who look after you.

### Children's home

#### *Your council*

The law says councils must give importance to your physical and mental health and well-being. This is a great new duty which was passed by our Parliament in London in 2017.<sup>10</sup>

When you first enter care, a doctor should check your health. Then your council must make sure it arranges for you to get the health care you need. After that, your health

should be carefully checked by a doctor or nurse every year (every six months if you are under the age of 5!). If you have the right amount of understanding, you can refuse to have these yearly medical assessments.<sup>11</sup> This is worked out on an individual basis (there is no set age, unless you are 16 or older and then you have the right to refuse consent).

### ***Your Education, Health and Care Plan***

If you have special educational needs, your council might have agreed a plan with you and your parents. This is called your Education, Health and Care Plan (EHC Plan for short).

The law says your EHC Plan should include certain information. This includes any health care you need.<sup>12</sup>

Once your Plan has been agreed, the NHS is under a legal duty to make sure the promises in the Plan about your health are put into practice.<sup>13</sup> Brilliant!

### ***Reviewing your care, and how you are doing***

As you probably know, there are important checks on your care and how you are doing. This is called a review. There is usually a meeting as part of this checking process. The person in charge of your review is called an independent reviewing officer (IRO for short). Your health is one of the things your IRO should look at during your reviews.<sup>14</sup>

### **Your children's home**

There are some very important legal rules your children's home has to follow, when it comes to your health. This is the standard of care expected in your home:

- + Your health and well-being needs are met (this is everything related to your physical and mental health).
- + You get advice, services and support about your health and well-being.
- + You get help to live a healthy lifestyle.

Staff and carers must make sure you attend health appointments, and that you are registered with a GP and a dentist. You must get the services you need, whether this is for your physical health or your mental health (or both).<sup>15</sup>

## **Hospital or other health place**

If you are in hospital or another health place, your health should be getting the best of attention!

There are legal rules about your stay in hospital which say that your care and treatment must:

- Be right for you.

- Meet your needs.
- Be what you want.<sup>16</sup>

You must be treated with dignity and respect in hospital.<sup>17</sup>

Your permission is necessary for any care and treatment.<sup>18</sup> If you are over 16, you have the right to give permission; if you are under 16, it depends on your level of understanding. If you are unable to give permission, your parents or carers can do so on your behalf.

The care and treatment you get must be safe. This covers the place you are staying, medicines and the use of equipment – things like X-Ray machines and blood pressure monitors).<sup>19</sup>

You must be protected from abuse and bad treatment.<sup>20</sup>

You must get the food and drink you need to be healthy.<sup>21</sup>

Your ward or unit must be clean, secure and well looked after.<sup>22</sup>

Any complaints you make must be looked at, and responded to fairly and properly.<sup>23</sup> You have the right to an independent advocate if you want to complain about any part of your care in hospital – great!

If you are in hospital because of your mental health, you should be looked after in a way that is suitable to your age.<sup>24</sup>

## Immigration detention

You have the right to be in accommodation that suits your needs as a child.<sup>25</sup> This includes your health.

Within 24 hours of you first arriving at the detention centre, your physical and mental health must be checked by a doctor.<sup>26</sup>

The food and drink you get in your centre must “be wholesome, nutritious, well prepared and served, reasonably varied, sufficient in quantity and meet all religious, dietary, cultural and medical needs”.<sup>27</sup>

The centre has special duties if your health is being badly affected by you being locked up, or because of torture you have suffered in the past, or you are feeling like you don’t want to live anymore. These rules say you must be closely looked after and get the help you need.<sup>28</sup>

You have the right to one hour in the open air every day.<sup>29</sup>

Your centre must give at least 30 hours of physical education every week. This is where someone helps you get exercise (like sports or dancing). Out of these 30 hours every week, at least 7 must be in the evening and 7 hours must be at the weekend.<sup>30</sup>

## Prison

The governor of your **young offender institution** must carry out his or her work with your welfare in mind.<sup>31</sup> Your health is part of this.

Your room or cell must be acceptable for your health. This includes the size of your room, and its lighting, heating, ventilation and fittings. You must be able to get in touch with an officer,<sup>32</sup> for example through your buzzer.

The bedding in your cell must be suitable for your warmth and health.<sup>33</sup>

You must get at least two hours a week physical exercise.<sup>34</sup>

There is a doctor in your prison who must look after your physical health and your mental health.<sup>35</sup> The doctor must give special attention to children whose mental health is a cause for concern. The doctor should tell the governor if you being locked up is having a very bad effect on your health. Then the governor must quickly write a report about you and send it to the government.<sup>36</sup>

If you are very poorly, or have been seriously injured, the person in charge of your prison must tell your parents or carers.<sup>37</sup>

The law says the purpose of sending you to a young offender institution is to help you prepare for life back in the community. One of the ways the prison must do this is to support your physical fitness.<sup>38</sup>

The food and drink you get in your centre must “be wholesome, nutritious, well prepared and served, reasonably varied and sufficient in quantity”.<sup>39</sup>

Alcohol and smoking are not allowed in prison.<sup>40</sup>

If you are in a **secure training centre**, the law says the person in charge (called the director or governor) must promote and protect your welfare.<sup>41</sup> This includes your health.

Within 24 hours of you arriving at the centre, you must be interviewed by a social worker and a health person to check how you are feeling and whether there is any risk of you harming yourself. A report must be written about you.

Your health must be checked “at regular intervals” during your time at the centre.<sup>42</sup>

You must be given your own room.<sup>43</sup>

You must get enough food and drink, and this must be wholesome and nutritious. The person in charge of your secure training centre must aim to give you three meals

a day. Your dietary requirements – connected to your health, religion, ethnic origin or culture – must be met.<sup>44</sup>

There is a doctor in the centre who looks after your physical and mental health.<sup>45</sup>

You have the right to physical exercise.<sup>46</sup>

Alcohol and tobacco are not allowed in secure training centres.<sup>47</sup>

## School

The law says schools where children live must protect and look after your welfare.<sup>48</sup> This includes your health.

Boarding schools and residential schools must follow rules (called standards).

If you are in a **boarding school**, the standards say there must be a written document which explains how children who are unwell will be looked after, and how every child's physical and mental health will be encouraged. Then what's in this document must be put into practice!

There should be a dedicated place for children and young people who are sick or injured. This must have its own toilet and washing area; there must be staff there who are qualified to help children; and girls and boys should be separately looked after if necessary.

As well as health care in your school, you should be able to see a doctor, dentist or optician in the local area.

Medicines must be looked after carefully.

Children and young people who look after their own medicine should have the understanding to do this.

Your rights to privacy connected to your health must be respected.<sup>49</sup>

If you are in a **residential special school**, the standards say the physical, emotional and social parts of your health must be encouraged.

Your school is expected to make sure you know how to stay healthy, and to encourage you to take part in things that will help your physical and mental health.

Your wishes and feelings must be actively asked for (without any pressure though) and taken into account when it comes to your health care.

Staff at your school must always push for the best for you and other children and young people. Excellent!

Your school must have great links with different health places. If you receive any

health treatment, this must be medically approved and there has to be agreement from you (if you have enough understanding) and your parents or your council. The people treating you must be properly qualified.

There must be a written document which explains how children who are unwell will be looked after, and how every child's physical and mental health will be encouraged. Then what's in this document must be put into practice!

There should be a dedicated place for children and young people who are sick or injured. This must have its own toilet and washing area; there must be staff there who are qualified to help children; and girls and boys should be separately looked after if necessary.

If you receive any health treatment, this should be written down in a file or on a computer record.

Your rights to privacy connected to your health must be respected.

If necessary, you should have your own health and welfare plan, agreed with your parents or carers.<sup>50</sup>

## Secure children's home

There are some very important legal rules your secure children's home has to follow, when it comes to your health. This is the standard of care expected in your home:

- + Your health and well-being needs are met (this is everything related to your physical and mental health).
- + You get advice, services and support about your health and well-being.
- + You get help to live a healthy lifestyle.

Staff and carers must make sure you attend health appointments, and that you are registered with a GP and a dentist. You must get the services you need, whether this is for your physical health or your mental health (or both).<sup>51</sup>

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<sup>1</sup> Section 1 National Health Service Act 2006.

<sup>2</sup> Section 1C, National Health Service Act 2006.

<sup>3</sup> Section 78, Education Act 2002.

<sup>4</sup> Part of primary and secondary national curriculum. The Education Secretary has a power to make PSHE a duty for schools (Section 35, Children and Social Work Act 2017): this has not yet come into force.

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- <sup>5</sup> Section 31, Mental Health Act 2007.
- <sup>6</sup> The duty on local authorities to make arrangements for the provision of independent advocacy services is contained in Section 223A, Local Government and Public Involvement in Health Act 2007.
- <sup>7</sup> Section 115, National Health Service Act 2006.
- <sup>8</sup> Section 177, National Health Service Act 2006.
- <sup>9</sup> Section 8, Family Law Reform Act 1969.
- <sup>10</sup> Part of the corporate parenting principles contained in Section 1, Children and Social Work Act 2017.
- <sup>11</sup> Regulation 7, The Care Planning, Placement and Case Review (England) Regulations 2010.
- <sup>12</sup> Section 37, Children and Families Act 2014.
- <sup>13</sup> Section 42, Children and Families Act 2014.
- <sup>14</sup> Schedule 7, The Care Planning, Placement and Case Review (England) Regulations 2010.
- <sup>15</sup> Regulation 10, The Children’s Homes (England) Regulations 2015.
- <sup>16</sup> Regulation 9, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- <sup>17</sup> Regulation 10, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- <sup>18</sup> Regulation 11, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- <sup>19</sup> Regulation 12, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- <sup>20</sup> Regulation 13, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- <sup>21</sup> Regulation 14, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- <sup>22</sup> Regulation 15, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- <sup>23</sup> Regulation 16, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- <sup>24</sup> Section 131A Mental Health Act 1983 (as amended by Mental Health Act 2007).
- <sup>25</sup> Rule 11(2) The Detention Centre Rules 2001.
- <sup>26</sup> Rule 34, The Detention Centre Rules 2001.
- <sup>27</sup> Rule 13, The Detention Centre Rules 2001.
- <sup>28</sup> Rule 35, The Detention Centre Rules 2001.
- <sup>29</sup> Rule 18, The Detention Centre Rules 2001.
- <sup>30</sup> Home Office (2011) Detention services operating standards manual.
- <sup>31</sup> Section 11 Children Act 2004.
- <sup>32</sup> Rule 22, The Young Offender Institution Rules 2000.
- <sup>33</sup> Rule 23, The Young Offender Institution Rules 2000.
- <sup>34</sup> Rule 41, The Young Offender Institution Rules 2000.
- <sup>35</sup> Rule 27, The Young Offender Institution Rules 2000.
- <sup>36</sup> Rule 28, The Young Offender Institution Rules 2000.
- <sup>37</sup> Rule 29, The Young Offender Institution Rules 2000.
- <sup>38</sup> Rule 3, The Young Offender Institution Rules 2000.
- <sup>39</sup> Rule 20, The Young Offender Institution Rules 2000.
- <sup>40</sup> Rule 21, The Young Offender Institution Rules 2000.
- <sup>41</sup> Rule 45A(2)(b)(i) The Secure Training Centre Rules 1998.
- <sup>42</sup> Rule 23, The Secure Training Centre Rules 1998.
- <sup>43</sup> Rule 18, The Secure Training Centre Rules 1998. **8**

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<sup>44</sup> Rule 16, The Secure Training Centre Rules 1998.

<sup>45</sup> Rule 22, The Secure Training Centre Rules 1998.

<sup>46</sup> Rule 27, The Secure Training Centre Rules 1998..

<sup>47</sup> Rule 17, The Secure Training Centre Rules 1998.

<sup>48</sup> Section 87(1) Children Act 1989.

<sup>49</sup> Department for Education (2015) Boarding schools. National minimum standards. Standard 3 (boarders' health and well-being).

<sup>50</sup> Department for Education (2015) Residential special schools. National minimum standards. Standard 3 (health and well-being).

<sup>51</sup> Rule 10, The Children's Homes (England) Regulations 2015.