

TO: Iowa Department of Public Health, Division Directors
FROM: Heather L. Adams, Assistant Attorney General
DATE: December 7, 2009
RE: Minor Consent Laws

The following memorandum contains a compilation and summary of Iowa laws which govern the ability of a minor to independently consent to medical care, treatment, and services. This summary may be shared with IDPH programs, staff, and contractors. Please note that if IDPH employees have questions about applying these laws to a specific factual situation they should request that the issue be discussed at our next regularly scheduled AAG/Division meeting, if time allows, or contact me directly if immediate attention is required. If IDPH contractors have questions about the application of the following laws they should contact legal counsel for that agency or organization to receive guidance.

Definition of Minor. Iowa law generally provides that any person under the age of eighteen is a minor. However, persons who are married prior to the age of eighteen and persons who are incarcerated as adults are deemed to have attained the age of majority and may consent to medical care, services, and treatment:

The period of minority extends to the age of eighteen years, but all minors attain their majority by marriage. A person who is less than eighteen years old, but who is tried, convicted, and sentenced as an adult and committed to the custody of the director of the department of corrections shall be deemed to have attained the age of majority for purposes of making decisions and giving consent to medical care, related services, and treatment during the period of the person's incarceration.

Iowa Code § 599.1. *See also* Iowa Code §§ 135L.1(7), 600A.2(12), 600A.2B(1), 728.1(4).

Iowa statutory and common law also recognize majority for “emancipated” minors, defined for purposes of legal settlement as those minors who are absent from the parental home with the consent of the parents, are self supporting, and have assumed a new relationship inconsistent with being part of the family of the parents. Iowa Code § 252.16(4); *see also* Iowa Code chapter 232C (2009 Iowa Acts, ch. 154); Vaupel v. Bellach, 154 N.W.2d 149 (Iowa 1967). A minor will not be found to be emancipated solely on the basis of becoming pregnant or giving birth to a child. Bedford v. Bedford, 752 N.W.2d 34, 2008 WL 681138 (Iowa App. 2008). Minors who have been adjudicated as emancipated do not need parental consent to receive medical, dental, or psychiatric care. Iowa Code § 232C.4 (2009).

Consent Generally Required from Parent or Guardian. Under general common law, a health care provider must obtain the consent of a minor’s parent or guardian in order to

render medical care, treatment or services to a minor. Courts have recognized limited exceptions to the general rule of parental consent. In addition, the Iowa legislature has enacted several statutory provisions which expressly authorize minors to provide independent consent to receive medical care, treatment, and services.

The purpose behind these minor consent statutes is to encourage minors to receive medical care they might not otherwise receive if they had to obtain consent from a parent or guardian. Every state legislature including Iowa's has enacted statutory exceptions to override the common law parental consent rule and give minors the legal authority to consent to some types of medical care for certain diseases, conditions, and situations.

Health Care Services for which Minors may Consent.

A minor may consent to the following health care services without the permission or consent of his or her parents or guardians:

Contraceptive Services

In Iowa minors are expressly authorized to consent to receive contraceptive services. A health care provider is not required to obtain consent from a parent or guardian prior to providing contraceptive services to a minor.

The relevant portion of the text of the law provides as follows:

A person may apply for...contraceptive services...directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic.The minor shall give written consent to ...receive the services[.] Such consent is not subject to later disaffirmance by reason of minority.¹

Iowa Code § 141A.7(3). *See also* Carey v. Population Services, International, 431 U.S. 678 (1977); Title X Family Planning Program.

Emergency Care

Health care providers (including physicians, physician designees, ARNPs, PAs, RNs, LPNs, and emergency medical care providers) are not required to obtain parental consent prior to rendering "emergency medical, surgical, hospital, or health services" to a minor, if the parent or guardian is not "reasonably available." Iowa Code § 147A.10(2).

¹ This sentence means that a minor's consent may not be later subject to challenge or repudiation by the minor or any other person on the ground that the person was a minor at the time he or she consented to the service.

HIV/AIDS Care

Iowa law authorizes a minor to give consent to receive services, screening, testing, and treatment for HIV/AIDS, and provides that the consent of a parent or guardian is not required to provide these services. However, the law does require that a minor must be informed prior to testing that if the test result is positive the minor's legal guardian shall be informed by the testing facility.

The text of the law provides as follows:

Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is exempt from the notification requirement. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

Iowa Code § 141A.7(3).

Non-medical Services

Certain public health services provided to minors may not require parental consent if the service does not constitute medical care or treatment. For example, providing educational services to minors under the WIC program does not constitute medical care or treatment and therefore does not require consent from a parent or guardian.

Sexually Transmitted Diseases – Prevention, Diagnosis and Treatment

Iowa law authorizes a minor to provide consent for medical services related to the prevention, diagnosis, or treatment of a sexually transmitted disease. Minors are able to provide consent for prevention services, such as the hepatitis B vaccine, and for treatment for STD's, including chlamydia, gonorrhea, hepatitis B and hepatitis C, human papillomavirus (HPV), and syphilis. A health care provider is not required to obtain consent from a parent or guardian prior to providing these services to a minor.

The text of the law provides as follows:

A minor shall have the legal capacity to act and give consent to provision of medical care or services to the minor for the prevention, diagnosis, or

treatment of a sexually transmitted disease or infection by a hospital, clinic, or health care provider. Such medical care or services shall be provided by or under the supervision of a physician licensed to practice medicine and surgery or osteopathic medicine and surgery, a physician assistant, or an advanced registered nurse practitioner. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

Iowa Code § 139A.35.

Substance Abuse Treatment

Iowa law authorizes a minor to consent to substance abuse treatment. A substance abuse facility or a physician or physician's designee providing substance abuse treatment or rehabilitative services is not required to obtain consent from a parent or guardian prior to providing these services to a minor.

The text of the law provides as follows:

A substance abuser or chronic substance abuser may apply for voluntary treatment or rehabilitation services directly to a facility or to a licensed physician and surgeon or osteopathic physician and surgeon. If the proposed patient is a minor or an incompetent person, a parent, a legal guardian or other legal representative may make the application. The licensed physician and surgeon or osteopathic physician and surgeon or any employee or person acting under the direction or supervision of the physician and surgeon or osteopathic physician and surgeon, or the facility shall not report or disclose the name of the person or the fact that treatment was requested or has been undertaken to any law enforcement officer or law enforcement agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. If the person seeking such treatment or rehabilitation is a minor who has personally made application for treatment, the fact that the minor sought treatment or rehabilitation or is receiving treatment or rehabilitation services shall not be reported or disclosed to the parents or legal guardian of such minor without the minor's consent, and the minor may give legal consent to receive such treatment and rehabilitation.

Iowa Code § 125.33(1).

Victim Medical and Mental Health Services

A minor who is the victim of sexual abuse or assault may receive medical and mental health services without the prior consent or knowledge of the minor's parent or guardian under certain circumstances. The text of the law provides as follows:

“Victim” means a child under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 [sexual abuse statute] or 726 [incest and child endangerment statute] or who has been the subject of a forcible felony.

A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim's parents or guardians.

Such a professional shall notify the victim if the professional is required to report an incidence of child abuse involving the victim pursuant to section 232.69.

Iowa Code § 915.35(1), (2) & (3).

Other Health-Care Related Minor Consent Laws

Abortion -- Parental Notification Requirements Regarding Pregnant Minors -- Iowa Code chapter 135L

Anatomical Gifts by Minors – Iowa Code chapter 142C

Donation of Blood by Minors – Iowa Code § 599.6

Inpatient Mental Health Services for Minors -- Iowa Code § 229.2(1)