Minors and the Right to Consent to Health Care

The notion that many minors have the capacity and, indeed, the right to make important decisions about health care has been well established in federal and state policy. Many states specifically authorize minors to consent to contraceptive services, testing and treatment for HIV and other sexually transmitted diseases, prenatal care and delivery services, treatment for alcohol and drug abuse, and outpatient mental health care. With the exception of abortion, lawmakers have generally resisted attempts to impose a parental consent or notification requirement on minors' access to reproductive health care and other sensitive services. Nevertheless, the movement to "restore" parental rights and to legislate parental control over minors' reproductive health care decisions remains active.

By Heather Boonstra and Elizabeth Nash

Establishing rules for minors' consent for medical care has been one of the more difficult issues to face policymakers. On the one hand, it seems eminently reasonable that parents should have the right and responsibility to make health care decisions for their minor child. On the other hand, it may be more important for a young person to have access to confidential medical services than it is to require that parents be informed of their child's condition. Minors who are sexually active, pregnant, or infected with a sexually transmitted disease (STD) and those who abuse drugs or alcohol or suffer from emotional or psychological problems may avoid seeking care if they must involve their parents. Recognizing this reality, many states explicitly authorize a minor to make decisions about their own medical care, but balancing the rights of parents and the rights of minors remains a topic of debate.

At the federal level, the focal point of debate over minors' access to confidential services has been the Title X family planning program. Since its inception in 1970, services supported by Title X have been available to anyone who needs them without regard to age. As a result, Title X–supported clinics provide contraceptive services and other reproductive health care to minors on a confidential basis, although they encourage minors to involve their parents in their decision to seek services. Over the years, the provision of confidential contraceptive services to minors has come under attack from conservatives in Congress, who have repeatedly mounted efforts to require that a parent give consent or be notified before a minor receives these services in a Title X clinic. In 1998, the House of Representatives passed a parental notification requirement, but the Senate did not, and the provision was never enacted.

Similar debates have occurred at the state level. In Texas, for example, the legislature in 1997 voted to prohibit the use of state family planning funds to provide prescription drugs, such as birth control pills and medication for treating STDs, to minors without parental consent. The law was allowed to go into effect in 1998, after the Texas Supreme Court concluded that striking down the provision without evidence of harm would be premature. In fact, the law does not interfere with minors' ability to obtain confidential services from Title X–supported clinics and other providers who serve minors with federal funds.

In 2000, the South Carolina legislature considered a bill to prohibit the use of state funds to distribute condoms and other types of contraceptives to minors younger than age 16 whose parents had registered an objection with the state health department to their child's receiving such services. The measure was passed by the House of Representatives but dropped during committee consideration in the Senate. Similar measures in other states did not receive serious consideration, even at the committee level, and none were enacted.

The States and Medical Care for Minors

States have traditionally recognized the right of parents to make health care decisions on their children's behalf, on the presumption that before reaching the age of majority (18 in all but four states), young people lack the experience and judgment to make fully informed decisions. There have long been exceptions to this rule, however, such as medical emergencies when there is no time to obtain parental consent and in cases where a minor is "emancipated" by marriage or other circumstances and thus legally able to make decisions on his or her own behalf.

In addition, courts in some states have adopted the so-called mature minor rule, which allows a minor who is sufficiently intelligent and mature to understand the nature and consequences of a proposed treatment to consent to medical treatment without consulting his or her parents or obtaining their permission.

Moreover, over the last 30 years, states have passed laws explicitly authorizing minors to consent to health care related to sexual activity, substance abuse and mental health care. Although some states give doctors the option of informing parents that their minor son or daughter has received or is seeking these services, these laws leave the decision of whether to inform the parents entirely to the discretion of the physician as to the best interests of the minor.

This expansion of minors' authority over health care decisions was spurred in part by U.S. Supreme Court rulings extending the constitutional right to privacy to a minor's decision to obtain contraceptives or to terminate an unwanted pregnancy. It also reflects a recognition on the part of lawmakers that while parental involvement is desirable, many minors will not seek services they need if they have to tell their parents.

The Alan Guttmacher Institute has periodically reviewed state laws pertaining to minors' authority to consent to medical care and to make other important decisions without their parents' knowledge or permission. This year its review was expanded to also take into account state court decisions and attorneys general opinions that affect young people's access to confidential services (see table, page 6). The review, conducted in July 2000, found the following:

- Twenty-five states and the District of Columbia have laws or policies that explicitly give minors the authority to consent to contraceptive services.
- Twenty-seven states and the District of Columbia have laws or policies that specifically authorize a pregnant minor to obtain prenatal care and delivery services without parental consent or notification.
- All 50 states and the District of Columbia specifically allow minors to consent to testing and treatment for STDs, including HIV. (With respect to HIV, three states limit this authorization to testing only.)
- Forty-four states and the District of Columbia have laws or policies that authorize a minor who abuses drugs or alcohol to consent to confidential counseling and medical care.
- Laws in 20 states and the District of Columbia give minors the explicit authority to consent to outpatient mental health services.

No state explicitly requires parental consent or notification for any of these services. However, two states—Texas and Utah—prohibit the use of state funds to provide contraceptive services to minors without parental consent. And one state—Iowa—requires that parents be notified if their child receives a positive HIV test.

In addition to laws and policies that permit minors to consent to specific services, 21 states have statutes that authorize minors to consent to general medical and surgical care, at least under some circumstances, such as having a child, being pregnant or having reached a certain age. In Alabama, for example, minors aged 14 and older may consent to general medical care; in South Carolina, they may do so at 16.

The States and Abortion

The one notable exception to the expansion of minors' decision-making authority on health care matters is abortion. Only two states—Connecticut and Maine—and the District of Columbia have laws that affirm a minor's ability to obtain an abortion on her own. By contrast, 31 states have laws in effect that require the involvement of at least one parent in their daughter's abortion decision: In 16 of these states, a minor must have the consent of one or both parents; in the other 15 states, one or both parents must be notified prior to the abortion.

All but one of these statutes provides a confidential alternative to parental involvement, in the form of either a judicial bypass, in which a minor may obtain authorization for an abortion from a judge without informing her parents, or, in the case of Maryland, a "physician bypass" that permits a doctor to waive parental notice if the minor is capable of giving informed consent or if notice would lead to abuse of the minor. The Supreme Court has said that a confidential alternative is required to protect a minor's constitutional right to privacy. Utah is the only state whose statute does not meet this requirement.

Efforts to enact new parental involvement laws in the context of abortion have slowed in recent years. Between 1991 and 1997, the number of states with laws in effect mandating parental consent or notification rose from 18 to 30, but between 1997 and 2000, that number increased by only one. In large part, this drop-off reflects the fact that 10 other states have enacted laws that are currently blocked by courts from going into effect, leaving only seven states that have no parental involvement requirement on the books.

Some proponents of mandatory parental involvement justify the differential treatment of abortion and other reproductive health services on the ground that the decision to terminate a pregnancy is less a medical choice than a major life decision. Because terminating an unplanned pregnancy can have a significant long-term impact on a woman's psychological and emotional well-being, they say, parental guidance is especially important. However, states allow minors to make other decisions that can have a lasting effect on their lives.

Minors' Right to Consent to Health Care and to Make Other Importa

State	Contra-ceptive services	Prenatal care	STD/HIV services	Treatment for alcohol and/or drug abuse	Outpatient mental health services	General medical health services	Abortion services
Alabama	NL	MC	MC[2,3,4]	MC	MC	MC[5]	PC
Alaska	MC	MC	MC	NL	NL	MC[7]	NL[8]
Arizona	MC	NL	MC	MC[2]	NL	NL	NL[8]
Arkansas	MC	MC[10,11]	MC[4,11]	NL	NL	MC[12]	PN[13]
California	MC	MC[10]	MC[2,16,17]	MC[2,4]	MC[2,4]	NL	NL[8]
Colorado	MC[7,18]	NL	MC[16]	MC	MC[4,19]	NL	NL[8]
Connecticut	NL	NL	MC[16]	MC	MC	NL	MC
Delaware	MC[2,4]	MC[2,4,10,11]	MC[2,4,11,16]	MC[2]	NL	MC[7]	PN[20,21]
Dist.Columbia	MC	MC	MC	MC	MC	NL	MC
Florida	MC[7,18]	MC[11]	MC[3]	MC	MC[23]	NL	NL[8]
Georgia	MC	MC[10]	MC[3,4,11]	MC[4]	NL	NL	PN
Hawaii	MC[4,24,25]	MC[4,10,24,25]	MC[4,24,25]	MC[4]	NL	NL	NL
Idaho	MC	NL	MC[3,24]	MC	NL	MC[28]	PN[13,29]
Illinois	MC[7,18]	MC[11,18]	MC[2,3,4]	MC[2,4]	MC[2,4]	MC[7,11]	NL[8]
Indiana	NL	NL	MC	MC	NL	NL	PC
Iowa	NL	NL	MC[16,31]	MC	NL	NL	PN[21]
Kansas	NL[12]	MC[11,33]	MC[4]	MC	NL	MC[11,33]	PN
Kentucky	MC[4]	MC[4,10]	MC[3,4]	MC[4]	MC[4,6]	MC[4,7]	PC
Louisiana	NL	NL	MC[4]	MC[4]	NL	MC[4,11]	PC
Maine	MC[7,18]	NL	MC[4]	MC[4]	NL	NL	MC
Maryland	MC[4]	MC[4]	MC[4]	MC[4]	MC[4,6]	MC[4,7]	PN[21]
Massachusetts	NL[36]	MC[10]	MC	MC[2,37]	MC[6]	MC[7]	PC
Michigan	NL	MC[4]	MC[4,16]	MC[4]	MC[24]	NL	PC
Minnesota	MC[4]	MC[4]	MC[4]	MC[4]	NL	MC[4,7]	PN[13]
Mississippi	MC[7,18]	MC[11]	MC[3]	MC[4,19]	NL	PC	PC[13]
Missouri	NL	MC[4,10,11]	MC[4,11]	MC[4,11]	NL	MC[7,11]	PC
Montana	MC[4]	MC[4,11]	MC[4,11,16]	MC[4,11]	MC[6]	MC[4,7,11]	NL[8]
Nebraska	NL	NL	MC	MC	NL	NL	PN
Nevada	NL	NL	MC[3]	MC	NL	MC[7,12,18]	NL[8]
New Hampshire	NL	NL	MC[24]	MC[2]	NL	MC[12]	NL
New Jersey	NL	MC[4,11]	MC[4,11]	MC[4]	NL	MC[7]	NL[8]
New Mexico	MC	NL[42]	MC[16,17]	NL	MC	NL	NL[8]
New York	NL[36]	MC	MC[16]	MC[4]	MC[4]	MC[7]	NL
North Carolina	MC	MC[10]	MC[3]	MC	MC	NL[43]	PC[21]
North Dakota	NL	NL	MC[24,44]	MC[24]	NL	NL	PC[13]
Ohio	NL	NL	MC[16,17]	MC	MC[24]	NL	PN[21,29]
Oklahoma	MC[4,45]	MC[4,10]	MC[3,4]	MC[4]	NL	MC[4,7]	NL
Oregon	MC[4]	NL	MC[3,11]	MC[4,24]	MC[4,24]	MC[4,11,19]	NL
Pennsylvania	NL	MC	MC[3]	MC[4]	NL	MC[5]	PC
Rhode Island	NL	NL	MC[16]	MC	NL	NL	PC
South Carolina	MC[47]	NL[47]	MC[47]	NL[47]	NL[47]	MC[6,47]	PC[21,48]
South Dakota	NL	NL	MC	MC	NL	NL[33]	PN
Tennessee	MC	MC	MC[3]	MC[4]	MC[6]	NL	PC
Texas	NL[50]	MC[4,10,11]	MC[3,4,11]	MC[4]	MC	NL	PN
Utah	NL[50]	MC	MC	NL	NL	PC	PN[52]
Vermont	NL	NL	MC[2,3]	MC[2]	NL	NL	NL
Virginia	MC	MC	MC[3]	MC	MC	NL[33]	PN[21]
Washington	NL[54]	NL[54]	MC[3,11,24]	MC[23]	MC[23]	NL	NL
West Virginia	NL	NL	MC	MC	NL	NL	PN[21]
Wisconsin	NL	NL	MC	MC[2]	NL	NL	PC[21]
Wyoming	MC	NL	MC[3]	NL	NL	NL	PC
Total MC/MD	26	28	51	45	21	22	3
Total PC/PN	0	0	0	0	0	2	31
Total NL/NA	25	23	0	6	30	27	17

ant Decisions

Drop out of school[1]	*Marriage*	*Medical care for child*	*Placing child for adoption*
MD[6]	PC	MC	MC
MD[6]	PC	MC	NL[9]
MD[6]	PC	NL	MC
NA[14]	PC	MC[11]	MC[15]
NA[14]	PC	NL	MC
MD[6]	MD[6]	MC[11]	MC
PC	PC	MC	MC[15]
MD[6]	MD[22]	MC[11]	MC
NA[14]	PC	MC	MC
PC	MD[22]	MC[11]	NL[9]
MD[6]	MD[22]	MC[11]	MC
MD[26]	MD[19,27]	NL	MC
MD[6]	PC	MC[11]	MC
MD[30]	PC	MC[11]	MC
PC	MD[22]	NL	MC
MD[32]	PC	NL	NL[9]
MD[32]	PC	MC[11]	MC
PN[6]	MD[22]	MC[11]	MC[15]
MD[34]	PC	MC[11]	PC[35]
MD[34]	PC	NL	NL[9]
MD[6]	MD[22]	MC	MC[15]
MD[26]	PC	MC	NL[9]
MD	PC	MC	PC
PC	PC	MC	PC
MD[34]	PN[38]	MC[11]	MC
PN[26]	PC	MC[11]	MC
MD[39]	PC	MC[11]	MC[15]
MD[26]	MD[34]	NL	NL[9]
MD[40]	PC	MC	MC
PC	PC	NL	MC[41]
MD[6]	PC	MC[11]	MC
PC	PC	NL	MC
MD[6]	PC	MC	MC
MD[6]	PC	NL	NL[9]
MD[6,26]	PC	NL	MC
NA[14]	PC	NL	MC
PC	MD[22]	MC	MC[6]
MD[46]	PC	NL	NL[9]
MD[34]	PC	MC	PN
MD[6]	PC	MC	PC
MD[49]	PC	MC	MC
MD[6]	PC	NL	NL[9]
MD[34]	PC	NL	MC
NA[14]	MD[51]	NL	NL[9]
NA[14]	PC	MC	MC
MD[53]	PC	NL	MC
NA[14]	PC	MC[11]	MC
MD[6]	PC	NL	MC[15]
MD[30]	PC	NL	MC
NA[14]	PC	NL	NL[9]
MD[55]	PC	NL	MC
34	11	30	35
9	40	0	5
8	0	21	11

MC = Minor explicitly authorized to consent.
MD = Minor allowed to decide.
PC = Parental consent explicitly required.
PN = Parental notice explicitly required.
NL = No law or policy found.

Notes: In all but four states, the age of majority is 18. In AL and NE, it is 19, and in PA and MS, it is 21; however, in MS 18 is the age of consent for health care.

1. All states require minors to attend school until a certain age, beyond which the young person or, in a few states, the parents may decide whether the minor will stay in school.

2. Minor must be at least 12.

3. State officially classifies HIV/AIDS as an STD or infectious disease, for which minors may consent to testing and treatment.

4. Doctor may notify parents.

5. Minor must be a high school graduate, married, pregnant or a parent, or, in AL, at least 14.

6. Minor must be at least 16.

7. Minor may consent if a parent; also if married in DE, KY, ME, MD, MN, MS, MO and NV; also if married or pregnant in CO, FL, IL, MA, MT, NJ, NY and OK.

8. Law has been blocked by court action.

9. Law does not distinguish between minor and adult parents.

10. Excludes abortion.

11. Includes surgery.

12. Any minor who is mature enough to understand the nature and consequences of the proposed medical or surgical treatment may consent.

13. Involvement of both parents is required.

14. Minor may not drop out.

15. Minor parent must have a court-appointed guardian.

16. Law explicitly authorizes minor to consent to HIV testing and/or treatment.

17. Law does not apply to HIV treatment.

18. Minor may consent if has a child or doctor believes minor would suffer "probable" health hazard if services not provided; in IL also if minor is referred by doctor, clergyman or Planned Parenthood clinic; in CO and MS also if minor is referred by a doctor, clergyman, family planning clinic, school of higher education or state agency.

19. Minor must be at least 15.

20. Applies to minors younger than age 16.

21. Includes an alternative to parental involvement or judicial bypass. In MD the law provides for a physician bypass but does not have a judicial bypass.

22. A minor who is pregnant or, in DE, FL, GA, IN, MD and OK, has a child may marry without parental consent; in FL, KY and OK, the marriage must be authorized by a court; in IN and MD a minor must be at least 15.

23. Minor must be at least 13.

24. Minor must be at least 14.

25. Excludes surgery.

26. Minor may drop out if employed and in MA, MO and NE is 14, in HI is 15, in MA also if has completed the 6th grade; in NE also if has completed the 8th grade. Otherwise a minor may drop out at 16 in these states.

27. Minors need judicial authorization.

28. The state's medical consent statutes allow "any person of ordinary intelligence and awareness" to consent to hospital, medical, surgical or dental care. Although a later section authorizes parents to consent for a minor child, the attorney general's office "frequently" interprets the law as authorizing minors to consent. (R. Hardin, deputy attorney general, personal communication to P. Donovan, AGI, Oct. 22, 1990, reconfirmed to E. Nash, AGI, by R. Hardin, July 19, 2000.)

29. A revised law that requires parental consent is currently not in effect; meanwhile, the parental notification requirements remain in effect.

30. Minor may drop out of school before reaching age 16 if employed.

31. Parent must be notified if HIV test is positive.

32. A court may allow a minor to drop out.

33. Minor may consent if parent is not "available" or in the case of general medical care "not immediately available."

34. Minor must be at least 17.

35. Court may waive parental consent if the minor is "sufficiently mature and well informed" or the adoption is in the child's best interest.

36. The state funds a statewide program that gives minors access to confidential contraceptive care.

37. Minor may consent if found drug-dependent by two doctors; bars consent to methadone maintenance therapy.

38. Parents must be notified if either party is younger than age 21; however, female minors at least 15 and male minors at least 17 may marry without parental consent.

39. Minor must be at least 16 or have completed 8th grade, whichever occurs later.

40. After eighth grade, court determines whether the minor or the parents can make the decision.

41. Court may require the consent of a minor parent's parent.

42. Minor may consent to pregnancy testing and diagnosis.

43. Law allows minors to consent when parent or guardian is not "immediately available."

44. Parent must be shown the informed consent form for an HIV test before the minor signs it.

45. Minor may consent if she has ever been pregnant.

46. Minor must prove to the school board that the minor has acquired "equivalent knowledge" of the high school courses, or consent may be granted by the state school board for minors 16 and 17 who are employed.

47. Any minor 16 and older may consent to any health service other than operations. Health services may be rendered to minors of any age without parental consent when the provider believes the services are necessary.

48. Applies to minors younger than age 17.

49. Minor who has completed 8th grade may seek court authorization to drop out to work.

50. State funds may not be used to provide minors with confidential contraceptive services.

51. Minors 14–18 may petition court for permission to marry.

52. Law does not include a judicial bypass.

53. Minor must be at least 16, have completed 10th grade or be excused by the superintendent.

54. Providers rely on *State v. Koome*, which held that minors have the same constitutional rights as adults, to provide confidential contraceptive services and prenatal care to minors.

55. Minor must be at least 16 and have completed 10th grade.

Most states, for example, permit teenagers to drop out high school without their parents' approval, despite the documented adverse effects associated with the lack of a diploma. Although all states require young people to stay in school at least to age 16 or 17, except in very limited circumstances, once that age threshold has been reached, the states generally impose no barriers to minors' deciding to leave. A few states permit a minor to marry without parental consent under certain circumstances, usually pregnancy.

Notably, more than half of the states that require parental involvement for abortion permit a pregnant minor to make the decision to continue her pregnancy and to consent to prenatal care and delivery without consulting a parent. In addition, states appear to consider a minor who is a parent to be fully competent to make major decisions affecting the health and future of his or her child, even though many of these same states require a minor to involve her parents if she decides to terminate her pregnancy.

- Twenty-nine states and the District of Columbia currently have laws that authorize a minor parent to consent to medical care for his or her child.
- Most striking, 34 states and the District of Columbia explicitly permit a minor mother to place her child for adoption without her own parents' permission or knowledge. In addition, 11 states make no distinction between minor and adult parents; in these states, it appears, the decision to relinquish her child for adoption rests with the young mother.

In practice, it is likely that some adoption agencies and judges (all adoptions, regardless of the mother's age, have to be approved by a court) require that a young woman's parents be involved in the adoption decision. In principle, however, virtually all states consider a minor mother capable of making an independent decision about whether or not to place her child for adoption (although a few states require that the minor have a court-appointed guardian).

Ensuring Minors' Access to Health Care

Most youth-serving agencies and medical professionals believe that access to confidential services is essential, because many sexually active adolescents will not seek care if they have to inform a parent or have their parent's consent. "Minors' consent laws are extremely important," argues Abigail English, director of the Center for Adolescent Health and the Law. "They encourage young people to seek the health care services they need and enable them to talk candidly with their providers."

Advocates of parental involvement laws, which include organizations such as Focus on the Family and the Family Research Council, maintain that minors' consent laws reflect "an increasing nonchalance about the sanctity of the family unit on the part of the government." Government policies, they contend, undermine parental authority and family autonomy. Conservative activists also argue that granting minors access to confidential services is tantamount to condoning sexual activity. Despite access to contraceptives, they say, pregnancy rates among teens remain high. "The current prescription for preventing pregnancy and STDs among adolescents has failed miserably in solving the problem," according to Focus on the Family. "Parental involvement and the transmitting of the parent's values are the most effective deterrent in preventing early sexual activity."

Providers who serve young people agree that parental involvement is desirable but point out that in some instances, it is not to a minor's benefit. "In the best of all worlds, teens and parents would work in partnership on decisions that could have a lifelong impact," says Leslie Tarr Laurie, president and chief executive officer of Tapestry Health Systems, a health services provider in western Massachusetts. "But we see teens all the time whose parents are not their best advocates. In our state, where the greatest growth in HIV cases is among adolescents, access to reproductive health care is a matter of life and death. Confidentiality is the cornerstone of our services," Laurie reports. "We help teenagers avoid not only the costly and often tragic consequences of unintended pregnancy and childbearing, but also an early death from AIDS. The bottom line is, if we don't assure access to confidential health care, teenagers simply will stop seeking the care they desire and need."

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