

Blog Post

Florida: Do You Know Where Your “Minor” Is?

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During the COVID-19 pandemic, telehealth usage has dramatically increased, as discussed in a recent [Health Law Rx post](#). Telehealth makes it easier for individuals who cannot drive, including many minors, to seek necessary care, leading to many questions regarding when “minors” (individuals under 18 years of age) can consent to treatment – when the “disability of nonage” has been removed. Read more [here](#) and [here](#). The following overview of the relevant Florida laws is meant to help healthcare providers determine when minors can and cannot consent to their own treatment.

Parental or Substitute Decision Maker Consent Required (Disability Not Removed)

Before a minor can receive ordinary and necessary medical examinations and treatment, the minor’s healthcare provider must obtain consent from the minor’s natural or adoptive parent, legal custodian, or legal guardian, unless an [exception applies](#). If, however, the provider cannot reach those individuals after a reasonable attempt, the healthcare provider may contact the following substitute decision makers, *in this order of priority*:

- Healthcare surrogate or a person who possesses a power of attorney to provide medical consent for the minor

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- Stepparent of the minor
- Grandparent of the minor
- Adult brother or sister of the minor
- Adult aunt or uncle of the minor

If one of the above substitute decision makers provides consent, the healthcare provider must contact the minor's parent, legal custodian, or legal guardian as soon as possible after providing the medical care to inform them of the care provided. The medical record must document the reason that the substitute decision maker provided the consent.

Exceptions Allowing a Minor to Provide Consent (Disability Removed)

Parental consent is *not* required if the minor is:

- Married
- Divorced or widowed
- Legally emancipated through court proceedings, which is only available to minors who are 16 or 17 years old
- Unwed and pregnant, but may only consent to medical or surgical services related to her pregnancy or her child
- Unwed with a child, but may only consent to medical or surgical services related to her child (unless one of the other exceptions is also applicable)

A minor may also provide consent for the following treatment and services, but only as to that specific treatment or service (unless one of the other exceptions also applies):

- Examination/treatment for sexually transmitted diseases
- Nonsurgical maternal health and contraceptive information and services, but only if the minor:

- Is married,
- Is a parent,
- Is pregnant,
- Has the consent of a parent or legal guardian, or
- May, in the opinion of a physician, suffer probable health hazards if such services are not provided
- Voluntary substance abuse services

Exceptions for Emergency Care of a Minor (Disability Partially Removed)

Parental consent is *not* required if the minor (1) becomes injured in an accident or “is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation or provision of emergency medical care or treatment would endanger the health or physical well-being of the minor,” and (2) parental consent cannot be immediately obtained for one of the following reasons:

- “The minor’s condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the minor to the hospital,” or
- “The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.”

The healthcare provider must secure proper notification as soon as possible after administering the emergency medical care or treatment. In addition, the hospital records must include documentation of the reason the consent was not initially obtained and a statement by the attending physician that “immediate emergency medical care or treatment was necessary for the patient’s health or physical well-being.”

Consent Compliance

To ensure compliance with the above laws, we recommend putting detailed policies and procedures in place and training staff on those policies and procedures. Staff would also benefit from an easy-to-follow checklist that outlines when minors may provide their own consent, when they cannot, and what documentation in the medical records is necessary. It is essential that healthcare providers conduct audits to ensure staff are adhering to the policies and procedures and provide additional training as necessary.

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