

CHAPTER 260

CONSENT OF MINORS FOR HEALTH SERVICES

§1501. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

1. Health care practitioner. "Health care practitioner" has the same meaning as set forth in Title 24, section 2502, subsection 1-A.

[PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

1-A. Health care. "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

[PL 2015, c. 444, §1 (NEW).]

2. Health care provider. "Health care provider" has the same meaning as set forth in Title 24, section 2502, subsection 2.

[PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

3. Minor. "Minor" means a person under 18 years of age.

[PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

4. Surrogate. "Surrogate" means:

A. An adult who is not a parent or legal guardian but who is related to a minor by blood, marriage or adoption and with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent. "Surrogate" does not include a person to whom a parent has delegated parental authority to consent to the minor's medical treatment through a power of attorney or other written instrument; or [PL 2015, c. 444, §1 (NEW).]

B. If an adult relative described in paragraph A does not exist, an adult to whom a parent or legal guardian has not delegated parental authority through a power of attorney or other written instrument with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent. [PL 2015, c. 444, §1 (NEW).]

[PL 2015, c. 444, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 694, §C8 (NEW). PL 1995, c. 694, §E2 (AFF). PL 2015, c. 444, §1 (AMD).

§1502. Consent

In addition to the ability to consent to treatment for health services as provided in sections 1823 and 1908 and Title 32, sections 2595, 3292, 3817, 6221 and 7004, a minor may consent to treatment for substance use disorder or for emotional or psychological problems. [PL 2017, c. 407, Pt. A, §70 (AMD).]

SECTION HISTORY

PL 1995, c. 694, §C8 (NEW). PL 1995, c. 694, §E2 (AFF). PL 2017, c. 407, Pt. A, §70 (AMD).

§1502-A. Consent to give blood

A minor may consent to give blood if the minor is at least 17 years of age, notwithstanding any other provision of law. [PL 1999, c. 10, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 10, §1 (NEW).

§1503. Authority

A minor may give consent to all medical, mental, dental and other health counseling and services if the minor: [PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

1. Living separately; independent of parental support. Is living separately from parents or a legal guardian and is independent of parental support. A minor may prove that the minor meets the requirements of this subsection with documentation including, but not limited to:

A. A written statement affirming that the minor is living separately from parents or a legal guardian and is independent of parental support signed by:

- (1) A director or designee of a governmental or nonprofit agency that receives public or private funding to provide services to homeless persons;
- (2) A local education agency liaison for homeless children and youth designated pursuant to 42 United States Code, Section 11432(g)(1)(J)(ii) or a school social worker or counselor; or
- (3) An attorney representing the minor in any legal matter; [PL 2019, c. 206, §1 (NEW).]

B. A copy of a protection from abuse complaint or a temporary order or final order of protection against the minor's parent or legal guardian; or [PL 2019, c. 206, §1 (NEW).]

C. Proof of filing a petition for emancipation pursuant to Title 15, section 3506-A; [PL 2019, c. 206, §1 (NEW).]

[PL 2019, c. 206, §1 (RPR).]

2. Married. Is or was legally married;

[PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

3. Armed Forces. Is or was a member of the Armed Forces of the United States; or

[PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

4. Emancipated. Has been emancipated by the court pursuant to Title 15, section 3506-A.

[PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

A health care practitioner who obtains documentation that meets the requirements of this section prior to providing medical, mental, dental or other health counseling or services to a minor pursuant to this section is immune from any civil or criminal liability based on the health care practitioner's determination to provide services, except that a health care practitioner may be held liable for the health care practitioner's gross negligence or willful or wanton acts or omissions. [PL 2019, c. 206, §2 (NEW).]

SECTION HISTORY

PL 1995, c. 694, §C8 (NEW). PL 1995, c. 694, §E2 (AFF). PL 2019, c. 206, §§1, 2 (AMD).

§1503-A. Authority for consent by a surrogate

1. Consent by a surrogate; notice of need for health care. A surrogate may give consent for health care for a minor except that a surrogate may not withhold or withdraw life-sustaining treatment or deny surgery, procedures or other interventions that are life-saving and medically necessary. The existence of a surrogate does not affect the ability of a minor to give consent as otherwise provided by law. Before the surrogate may give consent, the surrogate must make a reasonable good faith attempt to inform the minor's parents or legal guardian of the minor's need for health care and the parents' right to make those decisions. If parental notification is not required by other provisions of law, the surrogate is not required to inform or attempt to inform the minor's parents or legal guardian.

[PL 2015, c. 444, §2 (NEW).]

2. Notice of health care received. Unless parental notification is not required by other provisions of law, a surrogate giving consent pursuant to subsection 1 shall make a reasonable good faith attempt to inform the minor's parents or legal guardian of the health care that the minor received. A health care practitioner or health care provider who provides health care pursuant to this section shall inform the minor's surrogate of this obligation. The sending of correspondence by regular mail, e-mail, texting, posting to a personal website or other written means of communication to the last known address or contacting by telephone using the last known telephone number of the minor's parents or legal guardian, whichever means the surrogate believes to be the most effective way to ensure actual notification, is deemed a reasonable good faith attempt to provide notice for purposes of this subsection. [PL 2015, c. 444, §2 (NEW).]

3. Penalties. The following penalties apply to violations of this section.

A. A surrogate who makes decisions for a minor knowing that the decisions are prohibited by subsection 1 commits a Class E crime. [PL 2015, c. 444, §2 (NEW).]

B. A person who knowingly acts as a surrogate for a minor without meeting the definition of "surrogate" in section 1501, subsection 4 commits a Class E crime. [PL 2015, c. 444, §2 (NEW).]

C. A surrogate who fails to attempt to give notice as required in subsection 1 or 2 commits a Class E crime. [PL 2015, c. 444, §2 (NEW).]

[PL 2015, c. 444, §2 (NEW).]

SECTION HISTORY

PL 2015, c. 444, §2 (NEW).

§1504. Good faith reliance on consent

1. Reliance on minor's consent. A health care practitioner or health care provider who takes reasonable steps to ascertain that a minor is authorized to consent to health care as authorized in section 1503 and who subsequently renders health care in reliance on that consent is not liable for failing to have secured consent of the minor's parents or legal guardian prior to providing health care to the minor. [PL 2015, c. 444, §3 (NEW).]

2. Reliance on surrogate's consent. Recovery is not allowed against any health care practitioner or health care provider upon the grounds that the health care was rendered without informed consent if consent is given by the minor's surrogate pursuant to section 1503-A and the health care practitioner or provider acts with good faith reliance on that consent. [PL 2015, c. 444, §3 (NEW).]

SECTION HISTORY

PL 1995, c. 694, §C8 (NEW). PL 1995, c. 694, §E2 (AFF). PL 2015, c. 444, §3 (RPR).

§1505. Confidentiality; notification

1. Confidentiality. Except as otherwise provided by law, a minor who may consent to health care services, as provided in this chapter or by other provision of law, is entitled to the same confidentiality afforded to adults.

[PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

2. Parental notification. A health care practitioner or health care provider may notify the parent or guardian of a minor who has sought health care under this chapter if, in the judgment of the practitioner or provider, failure to inform the parent or guardian would seriously jeopardize the health of the minor or would seriously limit the practitioner's or provider's ability to provide treatment.

[PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1995, c. 694, §C8 (NEW). PL 1995, c. 694, §E2 (AFF).

§1506. Financial responsibility

Unless the parent or guardian expressly agrees to assume full or partial responsibility, a minor who consents to health care services as provided in this chapter is responsible for the costs of those services. A minor may not be denied benefits or services to which the minor is entitled from a health care practitioner, health care provider, insurer or public agency because the minor has given the consent for those services as provided in this chapter. [PL 1995, c. 694, Pt. C, §8 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1995, c. 694, §C8 (NEW). PL 1995, c. 694, §E2 (AFF).

§1507. Consent for sexual assault forensic examination

Notwithstanding the limitations set forth in section 1503 or the existence of a surrogate described in section 1503-A, a minor may consent to health services associated with a sexual assault forensic examination to collect evidence after an alleged sexual assault. [PL 2015, c. 444, §4 (AMD).]

SECTION HISTORY

PL 1999, c. 90, §1 (NEW). PL 2015, c. 444, §4 (AMD).

§1508. Consent for gender-affirming hormone therapy

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Gender-affirming hormone therapy" means nonsurgical, medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, that includes, but is not limited to, the following health care:

- (1) Interventions to suppress the development of endogenous secondary sex characteristics;
- (2) Interventions to align the patient's appearance or physical body with the patient's gender identity; or
- (3) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria. [PL 2023, c. 413, §1 (NEW).]

B. "Gender dysphoria" means a clinical diagnosis of gender dysphoria as defined either in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or in the Standards of Care for the Health of Transgender and Gender Diverse People, Version 8 or subsequent version, published by the World Professional Association for Transgender Health. [PL 2023, c. 413, §1 (NEW).]

C. "Health care professional" means a person qualified by training and experience to provide and monitor the provision of gender-affirming hormone therapy who is authorized by law to prescribe medication and who is:

- (1) Licensed by the Board of Licensure in Medicine under Title 32, chapter 48;
- (2) Licensed by the Board of Osteopathic Licensure under Title 32, chapter 36; or
- (3) Licensed by the State Board of Nursing as an advanced practice registered nurse under Title 32, chapter 31. [PL 2023, c. 413, §1 (NEW).]

[PL 2023, c. 413, §1 (NEW).]

2. Authority of minor to consent. A health care professional may provide gender-affirming hormone therapy and follow-up care to a minor without obtaining the consent of the parent or guardian of the minor only if:

- A. The minor is at least 16 years of age; [PL 2023, c. 413, §1 (NEW).]
 - B. The minor has been diagnosed with gender dysphoria by a health care professional; [PL 2023, c. 413, §1 (NEW).]
 - C. In the judgment of the health care professional, the minor is experiencing harm from or is expected to experience harm from not receiving gender-affirming hormone therapy; [PL 2023, c. 413, §1 (NEW).]
 - D. The minor informs the health care professional that the minor has discussed the minor's gender dysphoria with a parent or guardian of the minor and that parent or guardian refused to support treatment of the minor's gender dysphoria; and [PL 2023, c. 413, §1 (NEW).]
 - E. The minor provides informed written consent to the receipt of gender-affirming hormone therapy in accordance with the requirements of subsection 3; the health care professional makes the written consent that is set forth in a writing containing the information and statements required by subsection 3, paragraph B and that is signed by the minor a part of the minor's health record; and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent. [PL 2023, c. 413, §1 (NEW).]
- [PL 2023, c. 413, §1 (NEW).]

3. Informed consent. A minor who meets the requirements of subsection 2, paragraphs A to D may provide informed written consent to gender-affirming hormone therapy and follow-up care only in accordance with the requirements of this subsection.

A. A health care professional shall, in a manner that the health care professional believes is not misleading and will be understood by the minor:

- (1) Explain that the information being given to the minor is not intended to coerce, persuade or induce the minor to consent to gender-affirming hormone therapy;
- (2) Explain that the minor may withdraw the decision to commence or to continue to receive gender-affirming hormone therapy at any time either before the therapy begins or during the course of the therapy;
- (3) Clearly and fully explore with the minor the alternative choices available for managing and treating gender dysphoria;
- (4) Explain the physiological effects, benefits and possible consequences of gender-affirming hormone therapy and follow-up care, including the physiological effects, benefits and possible consequences of discontinuing the therapy;
- (5) Discuss the possibility of involving the minor's parents or guardians in the minor's decision making about gender-affirming hormone therapy and follow-up care and explore whether the minor believes that parent or guardian involvement would be in the minor's best interests; and
- (6) Provide an adequate opportunity for the minor to ask any questions concerning gender dysphoria, gender-affirming hormone therapy and follow-up care and provide the information the minor seeks or, if the health care professional cannot provide the information, explain where the minor can obtain the information. [PL 2023, c. 413, §1 (NEW).]

B. After providing the information and counseling required by paragraph A, the health care professional shall have the minor sign and date a form stating:

- (1) The business address and telephone number of the health care professional who provided the information and counseling required by paragraph A;
- (2) The minor has received information on gender-affirming hormone therapy and follow-up care, including the benefits and possible consequences of and alternatives to gender-affirming hormone therapy;

- (3) The minor has received an explanation that the minor may withdraw consent to gender-affirming hormone therapy at any time, including after therapy begins;
- (4) The alternatives for managing gender dysphoria have been clearly and fully explored with the minor;
- (5) The minor has discussed with the health care professional the possibility of involving the minor's parents or guardians in the minor's decision making about gender-affirming hormone therapy and follow-up care. If the minor has chosen not to involve the minor's parents or guardians, the reasons for making that choice must be stated in writing on the form; and
- (6) The minor has been given an adequate opportunity to ask questions and receive answers about gender dysphoria, gender-affirming hormone therapy and follow-up care. [PL 2023, c. 413, §1 (NEW).]

C. The health care professional who provided the information and counseling required by paragraph A shall also sign and date the form signed by the minor under paragraph B. The health care professional shall retain a copy of the form in that health care professional's files and shall give the form to the minor. If the health care professional who provided the information and counseling required by paragraph A is not the health care professional who will provide gender-affirming hormone therapy to the minor, at the minor's request the health care professional shall transmit the form to the health care professional who will provide gender-affirming hormone therapy to the minor. [PL 2023, c. 413, §1 (NEW).]

[PL 2023, c. 413, §1 (NEW).]

4. Rebuttable presumption of validity. A written consent of a minor who meets the requirements of subsection 2 that is set forth in a writing containing the information and statements required by subsection 3, paragraph B and that is signed by the minor is presumed to be a valid, informed consent to treatment for gender-affirming hormone therapy and bars an action by a parent or guardian of the minor on the grounds of battery, malpractice or any other claim for providing gender-affirming hormone therapy without consent from a parent or guardian. The presumption of validity established in this subsection may be rebutted only by evidence that the minor's consent was obtained through fraud, deception or misrepresentation of material fact.

[PL 2023, c. 413, §1 (NEW).]

5. Disallowance of recovery. Recovery is not allowed against a health care professional upon the grounds that gender-affirming hormone therapy of a minor who meets the requirements of subsection 2 was rendered without the informed consent of the minor when:

A. The health care professional, in obtaining the minor's consent, complied with the terms of this section and the standards of care among members of the same health care profession with similar training and experience situated in the same or similar communities; or [PL 2023, c. 413, §1 (NEW).]

B. The health care professional received and acted in good faith on the informed written consent to gender-affirming hormone therapy given by the minor to another health care professional that contains the information and statements required by subsection 3, paragraph B. [PL 2023, c. 413, §1 (NEW).]

[PL 2023, c. 413, §1 (NEW).]

6. Nonseverability. In the event that any portion of subsections 1 to 5 is held invalid, it is the intent of the Legislature that this entire section, other than subsection 7, is invalid.

[PL 2023, c. 413, §1 (NEW).]

7. Authority of parent to consent unaffected. This section does not affect the legal authority of a parent or guardian to consent to gender-affirming hormone therapy for a minor in accordance with established standards of care.

[PL 2023, c. 413, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 413, §1 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular and First Special Session of the 131st Maine Legislature and is current through November 1, 2023. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.