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# Minors' Ability to Consent to Medical Treatment Under Utah Law

**Insight — 03/04/2020**

Medical providers are sometimes faced with the difficult scenario of a minor (under 18 years of age) requesting medical or mental health treatment without a parent's or legal guardian's consent. This situation often arises in the context of sexually active minors who wish to obtain contraceptives available only through a medical provider (e.g., prescription birth control, IUD, etc.). When facing such scenarios, Utah providers need to be aware of relevant laws and carefully consider other implications.

Under Utah law, for purposes of consenting to their own general medical care, the following minors are treated as adults:

1. Legally emancipated minors;<sup>1</sup>
2. Those in active military service;<sup>2</sup>
3. Unaccompanied homeless minors 15 years of age or older;<sup>3</sup> and
4. Minors who are lawfully married.<sup>4</sup>

Additionally, a parent or legal guardian can permit their child to consent to their own care by executing a written authorization allowing the minor to (1) have a confidential relationship with the provider and (2) consent to their own treatment.<sup>5</sup> However, such consent should generally only be allowed for minors with sufficient maturity to make their own healthcare decisions.<sup>6</sup> Often, such contractual authorizations are used in the area of mental health therapy or when an older minor (e.g., 16 years of age who is driving to their own appointments) is receiving ongoing treatments and it isn't practical or feasible for a parent to always accompany the minor (e.g., minor is receiving weekly allergy shots over several months). In such cases, the provider should ensure that any care provided to the minor is expressly contemplated by the parent's or guardian's written authorization.

In Utah, there are a handful of statutes that provide minors with authority to consent to their own care for specific types of medical treatment, as follows:

1. Any minor who "is or professes to be afflicted with a sexually transmitted disease" can consent to examination and treatment for the STD.<sup>7</sup>
2. Any minor female who is pregnant can consent to medical services related to her pregnancy or childbirth.<sup>8</sup>
3. Any minor who is or has been married or judicially emancipated can consent to vaccinations for epidemic infections

and communicable diseases, and for examinations and vaccinations required to attend school.<sup>9</sup>

4. Any minor parent who has custody of a minor child or any minor who is pregnant may consent to vaccinations for epidemic infections and communicable diseases; for examinations and vaccinations required to attend school; and for the human papillomavirus (HPV) vaccine, provided the minor also represents to the provider that they are "abandoned," as that term is defined in U.C.A. § 76-5-109.<sup>10</sup>

Outside of the above-specified exceptions, Utah law is silent about a minor's ability to consent to other treatment types, including those related to contraception or family planning. And, while there is still a law in Utah's code which makes it a crime to provide contraceptives to a minor without notifying the minor's parent or guardian,<sup>11</sup> this law has been ruled unconstitutional and is unenforceable.<sup>12</sup>

Nevertheless, under federal law, minors may receive family planning services from Title X<sup>13</sup> grantees, which includes Medicaid, without parental consent or notification.<sup>14</sup> Such services may include patient education and counseling concerning family planning, contraceptive supplies and education, basic infertility services, pregnancy diagnosis and counseling, cervical and breast cancer screening, sexually transmitted disease and HIV prevention education, testing and referral, but not abortion.<sup>15</sup> Thus, for family planning services provided at a Utah Title X clinic or paid for *via* Medicaid, no parental consent or notification is required for a minor to receive family planning services.<sup>16</sup>

Another consideration for Utah providers arises if they are the recipients of state funds. While not enforceable against Title X and the Medicaid program, Utah Code Ann. § 76-7-322 states that "[n]o funds of the state or its political subdivisions shall be used to provide contraceptive or abortion services to an unmarried minor without the prior written consent of the minor's parent or guardian." The courts have ruled that Utah can prohibit its own funds (if not comingled with federal funds) from being used for contraception services without parental consent.<sup>17</sup> Therefore, a wholly state-funded program could impose the parental consent restriction. Accordingly, if a provider or her/his employer receives any state-only funding, the provider should be extremely cautious about providing contraception without parental consent (unless the minor is a Medicaid recipient or the services are provided at a Title X clinic).

In many states, specific statutes allow minors to consent to their own care if they have sufficient maturity and understanding to appreciate the consequences of their healthcare decisions. This "mature minor" doctrine is premised on the fundamental right of mentally competent persons to make their own healthcare decisions and the recognition that a person's eighteenth birthday is a relatively arbitrary date on which to base a person's competency. The United States Supreme Court has recognized that, at some point, the constitutional right of privacy allows minors with sufficient maturity to make their own healthcare decisions, especially in matters involving reproductive rights.<sup>18</sup>

Utah has not explicitly adopted the mature minor doctrine, either by statute or case law, and thus, at present, it cannot be relied upon by Utah providers. However, it is worth Utah physicians considering this doctrine as a helpful tool when considering the risks associated with treatment of a minor patient for contraception without parental involvement.

Finally, a provider's decision to allow minors to consent to their own healthcare may have unanticipated consequences related to maintaining the confidentiality of the minor's medical records related to such care. For example, under HIPAA, if a practitioner determines that the minor may consent to their own healthcare, the parents or guardians are no longer the personal representatives for purposes of HIPAA.<sup>19</sup> Consequently, HIPAA limits the ability of practitioners to disclose information to parents or guardians without first obtaining the minor's authorization.<sup>20</sup> Although HIPAA generally allows the practitioner to use or disclose protected health information for payment purposes without the patient's authorization, such uses or disclosures must be limited to the minimum necessary.<sup>21</sup> Therefore, HIPAA requires that practitioners carefully limit how and what information they disclose to parents or guardians in such cases.

Confidentiality also will be hard to ensure in situations where a parent's or guardian's health insurance is billed for the minor's treatment. It may be advisable to inform the minor that if the services are billed through the parent's or guardian's insurance, the parents will have access to information regarding the services through the explanation of benefits that is sent to the insured and through other inquiry the insured may make directly to the insurance company. Thus, even where the provider doesn't disclose information to the parents or guardians, such information may be disclosed through the insurance provider.

### **Conclusion**

In most cases, it is advisable for practitioners to require parental consent before treating minors. However, where a provider chooses to rely on the minor's consent, practitioners should (i) ensure they have a statutorily or a court-approved basis for doing so; (ii) document the facts that justify the exception; and (iii) consider the unintended effects of their decision, including the increased limits on their ability to communicate with or collect from the patient, parents, and guardians.

For questions regarding this update, please contact:

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<sup>1</sup>U.C.A. §§ 78A-6-805(1)(f), 78B-3-406(6)(i).

<sup>2</sup>See U.C.A. 78B-12-102, 78B-12-219.

<sup>3</sup>U.C.A. § 78B-3-406(6)(k).

<sup>4</sup>U.C.A. § 78B-3-406(6)(j).

<sup>5</sup>In such situations, HIPAA allows the minor to control who can access their medical records for such care. 45 CFR § 164.502(g)(3)(i)(C).

<sup>6</sup>See AMA Ethics Opinion 5.055, available at <https://journalofethics.ama-assn.org/article/ama-code-medical-ethics-opinion-adolescent-care/2014-11>.

<sup>7</sup>U.C.A. § 26-6-18(1).

<sup>8</sup>U.C.A. §§ 78B-3-406(6)(f), 26-10-9(1)(b)(iv).

<sup>9</sup>U.C.A. § 26-10-9(1) to (2). The parent/legal guardian is not responsible for payment for these services unless the parent/legal guardian consented to the services. U.C.A. § 26-10-9(6).

<sup>10</sup>*Id.*

<sup>11</sup>U.C.A. § 76-7-325.

<sup>12</sup>The Court in *Planned Parenthood Ass'n of Utah v. Matheson* held that the right to privacy extends to minors and that "decisions whether to accomplish or to prevent conception are among the most private and sensitive." 582 F. Supp. 1001, 1009 (D. Utah 1983) (quoting *Carey v. Population Services Int'l*, 431 U.S. 678, 685 (1977)).

<sup>13</sup>The Title X Family Planning program is authorized by Title X of the Public Health Service Act and is administered by the U.S. Department of Health and Human Services' Office of Population Affairs. Title X Family Planning clinics receive funding from the Title X Family Planning Program to provide individuals with comprehensive family planning and preventative health services. A list of all clinics receiving Title X funds can be found online at <https://www.hhs.gov/opa/sites/default/files/Title-X-Family-Planning-Directory-June2019.pdf>. At present, Planned Parenthood locations (8 throughout the state) are the only Title X clinics located in the state of Utah.

<sup>14</sup>42 U.S.C. § 300 *et seq.*, 42 C.F.R § 59.5. According to the federal Office of Population Affairs, Title X program staff may not notify parents or guardians before or after the minor has requested or received Title X family planning services. 42 C.F.R § 59.11; Clarification regarding Title X Family Planning Project Requirements, OPA Program Policy Notice 2014-01 (June 5, 2014), available at

<https://www.hhs.gov/opa/sites/default/files/ppn2014-01-001.pdf>.

<sup>15</sup>42 C.F.R § 59.5(a).

<sup>16</sup>While Utah has imposed payment restrictions on Medicaid providers, requiring parental/guardian consent prior to the provision of contraception for Medicaid recipients, such action was enjoined by the courts and ruled to violate federal law. See *Planned Parenthood Ass'n of Utah v. Dandoy*, 810 F.2d 984 (10th Cir. 1987); *Matheson*, 582 F.Supp. 1001; *T.H. v. Jones*, 425 F. Supp. 873 (D. Utah 1975). The courts found that because Utah's Medicaid program involves federal funds, Utah cannot statutorily

impose parental consent requirements on these federally-funded programs. *Id.* Moreover, Utah Medicaid cannot refuse to reimburse Medicaid providers for providing contraceptive-related services to minors without obtaining parental consent. *Id.*

<sup>17</sup>*Dandoy*, 810 F.2d 984; *Jane Does v. State of Utah Dep't of Health*, 776 F.2d 253 (10th Cir. 1985).

<sup>18</sup>See, e.g., *Carey v. Population Services Int'l*, 431 U.S. 678 (1977) (holding that law prohibiting anyone except a licensed pharmacist to distribute nonprescription contraceptives to persons age 16 or over was unconstitutional).

<sup>19</sup>45 C.F.R. § 164.502(g).

<sup>20</sup>45 C.F.R. §§ 164.502(a), 164.510(b).

<sup>21</sup>45 C.F.R. §§ 164.506, 164.514(d).

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