

Risk Matters - Informed Consent for Minors



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Informed consent is a fundamental ethical and legal requirement in healthcare, ensuring that patients have the autonomy to make decisions about their medical treatments and procedures. But who has the authority to provide such consent? With competent adults, this is rarely an issue. However, with minor patients, the answer can be problematic.

Recently, state legislatures have become more concerned about parents and legal guardians not being aware, let alone involved, in the medical decisions for their children or those entrusted to their care. As a result, laws are being passed to ensure that the decision-making authority is placed back in the hands of the parents and legal guardians. Whether you agree with these laws or not, they can potentially create areas of conflict between the provider, the parent/legal guardian, and the minor patient. They can also serve as a potential basis for an ethics complaint, malpractice action, or possibly criminal penalties, depending on the jurisdiction.

These new laws are frequently drafted very narrowly and with no consideration of the practical impact to the provider's practice. For example, they often do not permit stepparents, grandparents, caretakers, foster parents, or persons other than the natural or adoptive parent/legal guardian to sign a consent form. Since often it is a stepparent or grandparent who brings the minor patient to the provider's office, these new laws are problematic.

Some statutes require specific documented parental/legal guardian consent when the minor patient's medical decision involves certain types of preventative care, testing, procedures, and treatment, including but not limited to vaccinations (immunizations and COVID), obstetric care, and medications which can appear to conflict with laws that have been on the books for years. Depending on the laws of the jurisdiction, for example, minor patients of a certain age may obtain confidential healthcare testing/treatment in limited circumstances such as reproductive health services or mental health treatment. These existing laws allow minors to consent to their own care without parental/guardian approval. But new laws may require parental or legal guardian consent to such testing/procedures or allow parental/guardian access to the patient's medical records or identification of prescribed medications thereby diminishing the healthcare provider's ability to protect the confidentiality of the minor patient.

Generally, the new laws continue to permit consent documents to be signed for minor's care as follows:

1. **Parents:** Biological or legally adoptive parents usually have the authority to provide informed consent for their minor children. In cases of divorce, it is advisable that the provider obtain a copy of the court's Divorce Decree or Order specifically granting the parent who accompanies the minor patient the authority to make medical decisions (or at least does not restrict such authority).
2. **Legal Guardians:** If a minor is under the care of a legal guardian (ordered or appointed by a court), the guardian has the authority to make medical decisions and execute informed consent documents on behalf of the minor. Healthcare providers should require the guardian to produce for copying and placement in the EHR the document from the court granting such authority.
3. **Emancipated Minors:** In some cases, minors who are legally emancipated (granted adult status by a court or through marriage or military service) can provide their own informed consent. Again, documentation should be requested and copied.
4. **Emergency Situations:** In emergencies where a parent or legal guardian cannot be reached, healthcare providers may be permitted to provide necessary treatment to a minor without prior consent.

The specific laws and regulations regarding who can execute an informed consent document for a minor vary by jurisdiction and given the speed and frequency some of the laws relating to minor consent are being passed, healthcare providers should consult with a SVMIC Claims Attorney (800-342-2239 or ContactSVMIC@svmic.com) or their [state medical association](#) to determine the current status of the law in their state.

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