

Consent by Minors to Medical Treatment

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Under Illinois law, a minor is a person who has not attained the age of 18 years.¹ In general, a minor cannot consent to medical treatment, and a parent, guardian, or person *in loco parentis* must consent to the treatment of a minor. However, there are several exceptions that permit a minor to consent for him or herself, and these exceptions depend upon either the minor's legal status or the medical condition or treatment received by the minor. The [Consent by Minors to Medical Treatment](#) infographic provides a visual reference of this information.

Exceptions Based on Minor's Legal Status

- **Emancipated minors may consent for their own treatment:** A minor between 16 and 18 years old who presents a court order declaring him or her emancipated² may lawfully consent to the performance of healthcare services by a physician, chiropractic physician, optometrist, advanced practice nurse, or physician assistant.³
- **Pregnant or married minors may consent for their own treatment:** A pregnant or married minor of any age⁴ may lawfully consent to the performance of healthcare services by a physician, chiropractic physician, optometrist, advanced practice nurse, or physician assistant.⁵
- **Minors who are parents may consent for their own treatment:** A minor who is a parent may consent to his or her own health care treatment.⁶ However, if the minor's status as a parent ends, then it appears that the minor no longer has authority to consent to his or her own treatment. This could occur if the minor's parental rights

¹ Probate Act of 1975, 755 ILCS 5/11-1.

² Emancipation of Minors Act, 750 ILCS 30/1 *et seq.* The minor claiming to be emancipated must present the court order before non-emergency services are provided, both to verify the minor's status and to ascertain whether there are restrictions on the emancipation, which might limit the minor's ability to consent to medical care.

³ 410 ILCS 210/1.

⁴ Consent by Minors to Medical Procedures Act, 410 ILCS 210/1 *et seq.*

⁵ 410 ILCS 210/1.

⁶ 410 ILCS 210/1.

were terminated as part of an adoption proceeding. Minors who are parents may consent to the performance of healthcare services for his or her child.⁷

Exceptions Based on Medical Treatment

- **Medical emergencies:** Emergency medical treatment may be provided to a minor without obtaining parental consent when, in the sole opinion of the provider, obtaining consent is not “reasonably feasible under the circumstances without adversely affecting the condition of the minor’s health.”⁸ A “provider” includes a physician, chiropractic physician, optometrist, advanced practice nurse, physician assistant, dentist, or hospital.⁹
- **Medical treatment/counseling for criminal sexual assault or abuse:** When a minor is a victim of sexual assault or abuse, a provider may furnish healthcare services or counseling related to the diagnosis or treatment of “any disease or injury arising from such offense” without obtaining the consent of the minor’s parent or guardian.¹⁰ A minor victim of sexual assault or abuse may consent to such counseling, diagnosis, or treatment.¹¹ A “provider” includes a hospital, physician, chiropractic physician, optometrist, advanced practice nurse, physician assistant, or other medical personnel.¹²

A minor sexual assault survivor may consent to and be provided emergency hospital services, forensic services, and follow-up healthcare without the consent of a parent, guardian, custodian, surrogate, or agent.¹³

- **Sexually transmitted diseases & HIV:** A minor 12 years of age or older who may have come into contact with a sexually transmitted disease (“STD”), including HIV,¹⁴ may consent to STD testing and to healthcare services and/or counseling related to the

⁷ 410 ILCS 210/2.

⁸ 410 ILCS 210/3(a).

⁹ 410 ILCS 210/3(a).

¹⁰ 410 ILCS 210/3(b).

¹¹ 410 ILCS 210/3(b).

¹² 410 ILCS 210/3(b).

¹³ Sexual Assault Survivors Emergency Treatment Act, 410 ILCS 70/5(a)-(b); see 410 ILCS 70/1a for definitions of “sexual assault survivor”, “forensic services”, and “follow-up healthcare”.

¹⁴ 77 Ill. Admin. Code 697.20 defines Sexually Transmissible Infection to include HIV.

diagnosis or treatment of a STD.¹⁵ Minors 12 years of age¹⁶ or older also have the right to anonymous HIV testing.¹⁷

Anyone involved in the furnishing of healthcare services or counseling to the minor related to the diagnosis or treatment of a STD shall, upon the minor's consent, make reasonable efforts to involve the family of the minor in his or her treatment, if the person furnishing treatment believes that the involvement of the family will not be detrimental to the progress and care of the minor.¹⁸ Unless the minor consents, providers providing healthcare services or counselling cannot seek the family's involvement in the minor's treatment.¹⁹

Providers counseling a minor that has come into contact with any STD, may, but are not obligated to, inform parents or guardians about the treatment provided to or needed by the minor.²⁰

If a minor's HIV test result is positive, the health care professional who ordered the test must make a reasonable effort to notify the minor's parent or guardian if, in his or her professional judgment, notification would be in the best interest of the minor, and the health care professional has first sought unsuccessfully to persuade the minor to notify the parent or guardian, or a reasonable time after the minor has agreed to notify the parent or legal guardian, the health care professional has reason to believe that the minor has not made the notification.²¹

- **Drug use or alcohol consumption:** A minor 12 years of age or older who may be determined to be an addict, an alcoholic, or an intoxicated person, or who may have a family member who abuses drugs or alcohol, may consent to healthcare services or counseling related to drug use or alcohol consumption by the minor or the effects on the minor of drug or alcohol abuse by a member of the minor's family.²²

¹⁵ 410 ILCS 210/4–210/5; 410 ILCS 305/9; 77 Ill. Admin. Code 697.420; 77 Ill Admin. Code 697.140(a)(10).

¹⁶ 77 Ill. Admin. Code 697.120(a) (“No person may order an HIV test without first ... receiving the documented informed consent of the subject of the test or the subject's legally authorized representative, except as provided in subsection (b).”). “Legally authorized representative” means an individual who is authorized to consent to HIV testing and/or disclosure of HIV test results and HIV-related information for an individual who is under the age of 12. 77 Ill. Admin. Code 697.20.

¹⁷ 410 ILCS 305/6; 77 Ill. Admin. Code 697.130.

¹⁸ 410 ILCS 210/4–210/5.

¹⁹ 410 ILCS 210/4–210/5.

²⁰ 410 ILCS 210/5.

²¹ 410 ILCS 305/9; 77 Ill. Admin. Code 697.140(a)(10).

²² 410 ILCS 210/4.

Anyone involved in the furnishing of medical care or counseling to the minor shall, upon the minor's consent, make reasonable efforts to involve the family of the minor in his or her treatment, if the person furnishing treatment believes that the involvement of the family will not be detrimental to the progress and care of the minor.²³ Unless the minor consents, providers providing healthcare services or counselling cannot seek the family's involvement in the minor's treatment.²⁴

A provider counseling a minor who abuses drugs or alcohol or has a family member who abuses drugs or alcohol, shall not inform the parent, parents, guardian, or other responsible adult of the minor's condition or treatment without the minor's consent unless, in the provider's judgment, it is necessary to protect the safety of the minor, a family member, or another individual.²⁵

- **Outpatient mental health services:** A minor 12 years of age or older may request and receive outpatient counseling or psychotherapy without consent of a parent, guardian, or person in loco parentis.²⁶ Until the consent of a parent, guardian, or person in loco parentis has been obtained, minors 12 to 16 years of age are limited to receiving eight, ninety (90) minute sessions.²⁷ Minors can access more than eight sessions if the provider believes it is in the minor's best interest to continue or that parental involvement would be detrimental to the minor's well-being.²⁸

The minor's parent, guardian, or person in loco parentis cannot be informed of counseling or psychotherapy without the written consent of the minor "unless the service provider believes the disclosure is necessary."²⁹ If the facility director or service provider intends to disclose the fact of counseling, the minor must be informed. A minor's parent, guardian, or person in loco parentis is not responsible for the cost of the sessions unless the parent, guardian, or person in loco parentis consented to the treatment.³⁰

- **Voluntary inpatient mental health services:** A minor 16 years of age or older may consent to admission to a mental health facility for inpatient services if the minor executes the application for voluntary admission.³¹ Unlike outpatient services,

²³ 410 ILCS 210/4–210/5.

²⁴ 410 ILCS 210/4–210/5.

²⁵ 410 ILCS 210/5.

²⁶ The term "in loco parentis" might include an aunt or uncle or some other adult who does not have legal guardianship but who otherwise stands in the shoes of a parent.

²⁷ Mental Health and Developmental Disabilities Code, 405 ILCS 5/3-5A-105(a).

²⁸ 405 ILCS 5/3-5A-105(a).

²⁹ 405 ILCS 5/3-5A-105(a-2).

³⁰ 405 ILCS 5/3-5A-105(b).

³¹ 405 ILCS 5/3-502.

providers must immediately inform the minor’s parent, guardian, or person in loco parentis of the admission, even if the minor does not consent to the disclosure.³²

- **Involuntary inpatient mental health services:** A minor may be admitted to a mental health facility upon application by a parent, guardian, or person in loco parentis if the facility director finds that the minor has a mental illness or emotional disturbance of such severity that hospitalization is necessary and that the minor is likely to benefit from inpatient treatment.³³ A minor 12 years of age or older must be given a copy of the application and his right to object to the admission shall be explained to him in an understandable manner.³⁴ When the minor objects to his or her admission, the minor must be discharged at the earliest appropriate time, not to exceed 15 days, excluding Saturdays, Sundays and holidays, unless the objection is withdrawn in writing or unless, within that time, a petition for review of the admission is filed with the court.³⁵

- **Primary Care Services:** A minor at least 14 years of age but less than 18 years of age who is: (1) living separate and apart from his or her parents or legal guardian (with or without their consent), (2) who is unable or unwilling to return to the resident of a parent, and (3) managing his or her own personal affairs may consent to primary care services by a physician, advanced practice registered nurse, physician assistant, chiropractic physician, or optometrist under the following circumstances:
 - The health care professional reasonably believes that the minor seeking care understands the benefits and risks of any proposed primary care or services; and
 - The minor seeking care is identified in writing as a minor seeking care by:
 - An adult relative;
 - A representative of a homeless service agency that receives federal, State, county, or municipal funding to provide those services or that is otherwise sanctioned by a local continuum of care;
 - An attorney licensed to practice law in the State of Illinois;
 - A public school homeless liaison or school social worker;
 - A social service agency providing services to at risk, homeless, or runaway youth; or
 - A representative of a religious organization.³⁶

“**Minor seeking care**” does not include minors under the protective custody, temporary custody or guardianship of the Department of Children and Family Services.³⁷

³² 405 ILCS 5/3-502.

³³ 405 ILCS 5/3-503.

³⁴ 405 ILCS 5/3-505.

³⁵ 405 ILCS 5/3-507.

³⁶ 410 ILCS 210/1.5(a).

³⁷ 410 ILCS 210/1.5(e).

“Primary care services” means health care services that include screening, counseling, immunizations, medication, and treatment of illness and conditions customarily provided by licensed health care professionals in an out-patient setting. “Primary care service” does not include invasive care, beyond standard injections, laceration care, or non-surgical fracture care.³⁸

- **Birth Control Services:** Birth control services and information may be rendered by doctors licensed in Illinois to practice medicine to any minor:
 1. Who is married;
 2. Who is a parent;
 3. Who is pregnant;
 4. Who has the consent of a parent or guardian;
 5. If the failure to provide such services creates a serious health hazard; or
 6. If the minor is referred for such services by a physician, clergyman, or a Planned Parenthood agency.³⁹

- **Abortion:** A physician performing an abortion on a minor must give at least forty-eight (48) hours actual notice (and if not possible after reasonable effort, forty-eight (48) hours constructive notice), to an adult family member of the pregnant minor of his or her intention to perform the abortion.⁴⁰ There are certain exceptions to the notice requirement, including a judicial waiver of notice.⁴¹ A minor must consent to the abortion.⁴² A minor is any person under 18 years of age who is not or has not been married or who has not been emancipated under the Emancipation of Minors Act.⁴³ The Illinois Supreme Court upheld this law in 2013 after a lengthy history of challenges.⁴⁴

- **Blood donation:** Though technically not medical treatment, state law provides that any person 17 years of age or older may donate blood without permission or authorization from a parent or guardian, and any person 16 years of age may donate blood with written permission or authorization from a parent or guardian.⁴⁵

³⁸ 410 ILCS 210/1.5(e).

³⁹ Birth Control Services to Minors Act, 325 ILCS 10/1.

⁴⁰ Parental Notice of Abortion Act of 1995, 750 ILCS 70/15.

⁴¹ 750 ILCS 70/20.

⁴² 750 ILCS 70/30.

⁴³ 750 ILCS 70/10.

⁴⁴ See *Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745 (Ill. 2013). The case can be read at <http://www.illinoiscourts.gov/Opinions/SupremeCourt/2013/112673.pdf>.

⁴⁵ Blood Donation Act, 210 ILCS 15/1.

This document is intended to be a guide for IHA members and does not constitute legal advice. For questions, please contact the IHA Legal Department at legal@team-ihq.org or 630-276-5506.