

MINOR CONSENT & CONFIDENTIALITY IN MISSISSIPPI¹

MISSISSIPPI LAWS

Definitions

Miss. Code Ann. § 41-41-203(a):

“Adult” means an individual who is eighteen (18) years of age or older.

Miss. Code Ann. § 41-41-203(d):

“Capacity” means an individual’s ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision.

Miss. Code Ann. § 41-41-203(e):

“Emancipated minor” means an individual under the age of eighteen (18) years who:

- (i) Is or has been married;
- (ii) Has been adjudicated generally emancipated by a court of competent jurisdiction; or
- (iii) Has been adjudicated emancipated for the purpose of making health-care decisions by a court of competent jurisdiction.

Miss. Code Ann. § 41-41-203(f):

“Guardian” means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

Miss. Code Ann. § 41-41-203(g):

“Health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual’s physical or mental condition.

Miss. Code Ann. § 41-41-203(i):

“Health-care institution” means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

Miss. Code Ann. § 41-41-203(j):

“Health-care provider” means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

Miss. Code Ann. § 41-41-203(m):

“Physician” means an individual authorized to practice medicine or osteopathy under Title 73, Chapter 25, Mississippi Code of 1972.

Unemancipated Minors

Miss. Code Ann. § 41-41-3. Consent for surgical or medical treatment or procedures on unemancipated minors

(1) It is hereby recognized and established that, in addition to such other persons as may be so authorized and empowered, any one (1) of the following persons who is reasonably available, in descending order of priority, is authorized and empowered to consent on behalf of an unemancipated minor, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed or directed by a duly licensed physician:

- (a) The minor’s guardian or custodian.
- (b) The minor’s parent.
- (c) An adult brother or sister of the minor.
- (d) The minor’s grandparent.

(2) If none of the individuals eligible to act under subsection (1) is reasonably available, an adult who has exhibited special care and concern for the minor and who is reasonably available may act; the adult shall communicate the assumption of authority as promptly as practicable to the individuals specified in subsection (1) who can be readily contacted.

(3) Any female, regardless of age or marital status, is empowered to give consent for herself in connection with pregnancy or childbirth.

¹Notes: These excerpts are direct quotations from Mississippi and federal statutes and regulations. They are accurate as of June 10, 2016.

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Venereal Disease

Miss. Code Ann. § 41-41-13. Physician or nurse practitioner treating minor for venereal disease need not obtain parental consent

Any physician, duly licensed to practice medicine in the State of Mississippi, or any nurse practitioner, who, in the exercise of due care, renders medical care to a minor for treatment of a venereal disease is under no obligation to obtain the consent of a parent or guardian, as applicable, or to inform such parent or guardian of such treatment.

Infectious Disease/HIV

Miss. Code Ann. § 41-41-16. Health-care providers conducting tests for infectious diseases without consent of patient

A hospital or physician, and employees of such hospital or physician, may conduct an acquired immune deficiency syndrome (AIDS)/human immunodeficiency virus (HIV) antibody test or appropriate tests for any other infectious diseases without specific consent for such tests if the hospital or physician determines that the test is necessary for diagnostic purposes to provide appropriate care or treatment to the person to be tested, or in order to protect the health and safety of other patients or persons providing care and treatment to the person to be tested. The person who is to be tested shall be informed of the nature of the test which is to be conducted.

Contraception

Miss. Code Ann. § 41-42-7. Furnishing contraceptive supplies and information to minors

Contraceptive supplies and information may be furnished by physicians to any minor who is a parent, or who is married, or who has the consent of his or her parent or legal guardian, or who has been referred for such service by another physician, a clergyman, a family planning clinic, a school or institution of higher learning, or any agency or instrumentality of this state or any subdivision thereof.

Mental/emotional problems Resulting from Alcohol or Drugs

Miss. Code Ann. § 41-41-14. Physician treating minor for mental or emotional problems resulting from alcohol or drugs need not obtain parental consent

(1) Any physician or psychologist duly licensed to practice medicine or psychology in the State of Mississippi, who in the exercise of due care consults with or prescribes medication for a minor at least fifteen (15) years of age for mental or emotional problems caused by or related to alcohol or drugs is under no obligation to obtain the consent of the spouse, parent or guardian of said minor, but said minor may consent to such treatment the same as if the minor had reached the age of majority.

(2) The licensed physician or psychologist may, but shall not be obligated to, inform the spouse, parent or guardian of a minor in the circumstances enumerated as to the treatment given or needed and the information may be given to the spouse, parent or guardian without the consent of the minor patient and over the express refusal of the minor patient.

(3) The parent, spouse or guardian shall not be financially liable for any such consultation unless and until they have consented to the same.

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FEDERAL LAWS

Title X Family Planning Services

42 C.F.R. § 59.5 What requirements must be met by a family planning project?

(a) Each project supported under this part must:

(1) Provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services.

(2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other services, assistance from or participation in any other program of the applicant.

(3) Provide services in a manner which protects the dignity of the individual.

(4) Provide services without regard to religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or marital status.

(Note: for the complete text of 42 CFR § 59.5, see <http://www.hhs.gov/opa/title-x-family-planning/title-x-policies/program-guidelines/42-cfr-59-attachment-b.html>.)

42 C.F.R. § 59.11 Confidentiality.

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards

for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

Medicaid Family Planning Services

42 U.S.C. § 1396d(a)(4)(C)

For purposes of this title [42 USCS §§ 1396 et seq.]--

(a) Medical assistance. The term "medical assistance" means payment of part or all of the cost of the following care and services . . .(4) . . .

(C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of childbearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies[.]

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FEDERAL LAWS

Confidentiality in Federal Drug & Alcohol Programs

42 C.F.R. § 2.14 Minor patients.

(a) Definition of minor. As used in these regulations the term “minor” means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) State law not requiring parental consent to treatment. If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a State or local law requiring the program to furnish the service irrespective of ability to pay.

(c) State law requiring parental consent to treatment. (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor’s behalf.

(2) Where State law requires parental consent to treatment the fact of a minor’s application for treatment may be communicated to the minor’s parent, guardian, or other person authorized under State law to act in the minor’s behalf only if:

(i) The minor has given written consent to the disclosure in accordance with subpart C of these regulations or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the program director under paragraph (d) of this section.

(d) Minor applicant for services lacks capacity for rational choice. Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor’s behalf if the program director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under subpart C of these regulations to his or her parent, guardian, or other person authorized under State law to act in the minor’s behalf, and

(2) The applicant’s situation poses a substantial threat to the life or physical well being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor’s parent, guardian, or other person authorized under State law to act in the minor’s behalf.