

HEALTH INFORMATION AND DATA SHARING
Issue Brief

D.C.: Laws Regarding Minor Consent to Health Care

Introduction

Authority to consent to medical care directly impacts the health and wellness of minors. Familiarity with consent laws will enable medical professionals to better provide healthcare to patients under 18 years of age. The importance of minor consent laws can come up in many situations. A minor who is homeless may want access to medical care, despite not communicating with their parents. A grandparent who is caring for a child while a parent is incapacitated with a medical condition may want to take the child to a check-up. A minor with injuries may be in need of immediate treatment but their parents are inaccessible. These scenarios raise the question of what constitutes sufficient consent to treat a minor. Minor consent laws, as well as a medical provider's professional duties, help answer this question.


This brief reviews several aspects of D.C. law that are critical to the issue of consent to medical care, detailing ways the law provides for minors to consent to their own care. It also addresses when someone other than a parent or guardian may consent to treatment for a minor. And finally, this brief addresses additional considerations in the laws surrounding minor consent, specifically emergency circumstances and liability concerns.

Consent for a Minor's Health Care

Minors Consenting to their Own Care

Minors are not presumed to be able to consent to their own medical treatment, therefore different laws must provide minors with the ability to consent on their own behalf.

D.C. allows minors to consent to their own care with regard to specific treatments. For example, minors may consent to treatment for substance misuse, sexually transmitted infections, contraception (not including sterilization), and pregnancy.¹



Still, certain laws permitting consent to treatments have specific restrictions and rules that apply. For instance, a minor must be 11 years of age or older to consent to vaccination, and may only consent when they are capable of giving informed consent, when the vaccine is recommended by the U.S. Advisory Committee on Immunization, and when the vaccine is provided according to the U.S. Advisory Committee on Immunization schedule.² In addition, D.C. regulations provide that a minor may consent to treatment for a mental or emotional condition.³ The law further states that a minor may seek outpatient mental health services from a medical professional for 90 days without parental or guardian consent if the professional determines that the minor “is knowingly and voluntarily” seeking support services and those services are “clinically indicated for the minor’s well-being.”⁴ However, after 90 days, the medical professional needs to either reaffirm those determinations, terminate services, or seek parental or guardian consent with the minor’s consent.⁵

There is also one D.C. regulation that permits minors who are parents to consent to the care of their child, but not for their own care unless it involves one of the specific treatments discussed above.⁶ While minors in D.C. who are married are defined in this law as “emancipated minors,” the law does not explicitly give minors the legal ability to consent to their own care simply based on marital status.⁷


Informed Consent

Provisions that dictate when a minor may provide consent to care do not absolve a medical professional of their duty to obtain informed consent before administering treatment. Obtaining informed consent includes the duty of health care providers to “inform the patient of the consequences of a proposed treatment.”⁸ Therefore, medical professionals are still required to inform the minor patient of any material risks the patient needs to know to decide whether to undergo proposed treatment.⁹ At a minimum, D.C. case law provides that medical professionals must at least explain the nature of the condition; the nature of the proposed treatment; any alternative treatment; and the nature and degree of risks and benefits involved with the proposed treatment or choosing not to undergo the proposed treatment.¹⁰

Inherent in obtaining informed consent is the necessary determination whether a patient is capable of providing consent. This determination is a professional judgment based on what is known about the minor and the surrounding circumstances. The decision and reasoning for whether a minor is able to provide informed consent should be well documented in the medical professional’s notes. The American Academy of Pediatrics and American Medical Association both have issued recommendations and opinions on how to ascertain the ability to consent in minors. Some factors they recommend considering are: age, cultural factors, and the type of treatment sought.¹¹

Foster Care

If the minor patient is a foster child, then additional factors must be considered when determining consent for medical care. The Child and Family Services Agency retains “decision making authority for most day-to-day decisions,” including routine medical care.¹² Please note that foster parents are not allowed to consent for vaccinations on behalf of their foster children because immunizations are not considered routine medical care in D.C.¹³ When it comes to immunizations, a medical provider should first determine whether (1) the birth parent or legal guardian of the foster child has provided written consent for Child and Family Services to consent to immunizations or (2) there is a court order for the foster child to receive the immunization(s).¹⁴ Emergency care is also not considered routine and may not be consented to by foster parents.¹⁵ However, if the Agency has physical custody of the child, then the Agency may consent to emergency medical treatment at



any time.¹⁶ Therefore, if a child needs emergency care, typically the hospital will contact Child and Family Services for consent.¹⁷ Contacting Child and Family Services is recommended when there is doubt as to who may or may not consent on behalf of the foster child.¹⁸ Additionally, a provider may also ask the foster parent to contact the child's social worker.

Kinship Care

A kinship caregiver is defined as a relative of the child that is approved to provide day-to-day care of a child.¹⁹ The relationship to the child must either be by blood, marriage, domestic partnership, adoption, or godparent status.²⁰ However, a kinship caregiver may not provide consent on behalf of the minor, except in an emergency.²¹ For this reason, many kinship caregivers may seek a custodial power of attorney. A custodial power of attorney is a written agreement between the parents and the kinship caregiver that generally grants temporary and limited custody of a child to the kinship caregiver.²² One of the custody rights that may be transferred is the right to get medical care for the child and to make health-related decisions for the child. A sample of a custodial power of attorney is attached in Appendix A.²³

Additional Considerations

In addition to the laws based on the identity of the patient, there are legal considerations that medical professionals should evaluate when responding to minors in need of or seeking treatment.

Medical professionals may generally provide care to patients unable to give informed consent in **emergency situations**. A medical professional may provide emergency services to a patient in need of immediate care, regardless of age, when the professional believes it is the only alternative to avoid probable death or serious damage.²⁴ Even more broadly, a physician, surgeon, or dentist may treat a minor without a parent's consent if seeking parental consent would either substantially increase a risk to the minor's health or wellbeing or "unduly prolong suffering."²⁵

In addition to emergency exceptions, D.C. provides certain **liability protections** to medical professionals when treating minor patients. A medical professional acting in good faith is not liable for treating a minor who made misrepresentations to qualify for treatment.²⁶ Moreover, a provider who treats a legally consenting minor is not criminally liable for assault or battery based solely on treating the minor. A provider may face civil liability for negligence or intentional harm in diagnosis or treatment, as with any other patient, or for revealing information related to a minor's mental health treatment without consent.²⁷

Conclusion

Minor consent laws evoke two significant considerations: a parent's right to make decisions for their child and a minor's access to treatment. Understanding the relevant minor consent laws is important for medical professionals to help promote patient health and well-being. Laws are ever-changing, so medical professionals should regularly educate themselves on who is able to consent and to what treatments.



SUPPORTERS



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APPENDIX A

Sample form of Custodial Power of Attorney

**DISTRICT OF COLUMBIA CUSTODIAL POWER OF ATTORNEY PURSUANT TO
D.C. CODE § 21-2301**

1. I, _____, am the parent of the child(ren) listed below. There are no
Parent's name
court orders now in effect which would prohibit me from exercising the power that I now
seek to convey.

2. My address is:

3. _____ is an adult whose address is:
Third party's name

4. I grant to _____ the parental rights and responsibilities listed below
Third party's name
regarding care, physical custody, and control of the following child(ren):

Name: _____ Date of Birth: _____
Name: _____ Date of Birth: _____
Name: _____ Date of Birth: _____
Name: _____ Date of Birth: _____

5. I grant _____ these parental rights and responsibilities regarding the
Third party's name
above-listed child(ren):

INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING. IF YOU DO NOT WISH TO GRANT A SPECIFIC POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER THAT YOU DO NOT WISH TO GRANT.

- ___ physical custody of the child(ren) listed above;
- ___ the authority to enroll the child(ren) listed above in school;
- ___ the authority to obtain educational records regarding the child(ren) listed above;
- ___ the authority to make all school-related decisions for the child(ren) listed above;
- ___ the authority to obtain medical, mental health, or dental records regarding the child(ren) listed above;
- ___ the authority to consent to medical, mental health, or dental treatment for the child(ren) listed above;
- ___ the authority to act as representative payee for any Social Security benefits for which the child(ren) listed above may be eligible;
- ___ the authority to receive any other benefits for which the child(ren) listed above may be eligible; and



___ all of the rights and responsibilities listed above and, to the greatest extent possible by law, the authority to make any other decision or obtain any other benefits necessary for the welfare of the child(ren) listed above.

- 6. This custodial power of attorney does not include authority to consent to the marriage or adoption of the child. In addition, unless otherwise agreed by the parties in writing, the custodial power of attorney granted in this form does not affect:
 - A) the right of the above-listed child(ren) to inherit from his or her (their) parent;
 - B) the parent’s right to visit or contact the child(ren);
 - C) the parent’s right to determine the child(ren)’s religious affiliation.
 - D) the parent’s responsibility to provide financial, medical, and other support for the child(ren).

7. The custodial power of attorney granted in this form is further limited by these instructions:

8. As set forth in D.C. Code § 21-2301, the custodial power of attorney granted in this form does not affect my rights in any future proceeding concerning custody of or the allocation of parental rights and responsibilities for the child(ren) listed above.

9. The custodial power of attorney granted in this form shall take effect immediately. It shall continue to be effective even if I become disabled, incapacitated, or incompetent.

10. The custodial power of attorney granted in this form shall continue until I revoke it in writing and notify _____ in writing of my revocation.
Third party’s name

11. A person or entity that relies on this custodial power of attorney in good faith has no obligation to make any further inquiry or investigation into the authority of the attorney to act as described in this document. Revocation of this custodial power of attorney is not effective as to a person or entity that relies on it in good faith until that person or entity learns of the revocation.

Signed this _____ day of _____, 20__

 (Parent’s Signature)
 District of Columbia

_____ This document was acknowledged before me on
 _____ (Date) by _____ (name of principal)

 (Signature of notarial officer)

My commission expires: _____

¹ D.C. MUN. REGS. tit. 22, § 22-B600.7.

² D.C. MUN. REGS. tit. 22, § 22-B600.9.

³ D.C. MUN. REGS. tit. 22, § 22-B600.7(c).

⁴ D.C. CODE § 7-1231.14(b).

⁵ *Id.*

⁶ D.C. MUN. REGS. tit. 22, § 22-B600.3.

⁷ *Id.*

⁸ *Miller-McGee v. Washington Hosp. Ctr.*, 920 A.2d 430, 439 (D.C. 2007).

⁹ In D.C., a material risk is defined as a “risk which a reasonable person would consider significant in deciding whether to undergo a particular medical treatment.” *Miller-McGee*, 920 A.2d at 440 (D.C. 2007).

¹⁰ *Id.*

¹¹ AMA Council on Ethical and Judicial Affairs, *Opinion 5.055 - Confidential Care for Minors* (2014), available at <https://journalofethics.ama-assn.org/article/ama-code-medical-ethics-opinion-adolescent-care/2014-11#:~:text=Opinion%205.055%20%2D%20Confidential%20Care%20for,degree%20commensurate%20with%20their%20abilities.&text=Physicians%20should%20encourage%20parental%20involvement%20in%20these%20situations>.

¹² DC KinCare Alliance, *A Resource Guide for Relatives Raising D.C. Children* 77 (2020), available at https://www.dckincare.org/wp-content/uploads/2020/04/KinCare_Resource-Guide-UPDATED.4.23.20.pdf (explaining that parents may still retain “residual parental rights and responsibilities” that encompass medical decision-making, except for routine medical care); see also D.C. Code § 6-2125.

¹³ *Id.*

¹⁴ DC KinCare Alliance, *A Resource Guide for Relatives Raising D.C. Children* 59 (2020), available at https://www.dckincare.org/wp-content/uploads/2020/04/KinCare_Resource-Guide-UPDATED.4.23.20.pdf.

¹⁵ *Id.* at 17.

¹⁶ D.C. CODE § 4-1303.05.

¹⁷ DC KinCare Alliance, *A Resource Guide for Relatives Raising D.C. Children* 17 (2020), available at https://www.dckincare.org/wp-content/uploads/2020/04/KinCare_Resource-Guide-UPDATED.4.23.20.pdf.

¹⁸ *Id.*

¹⁹ D.C. CODE § 4-1301.02(14).

²⁰ *Id.*

²¹ DC KinCare Alliance, *supra* note 12 at 7.

²² D.C. CODE § 21-2301.

²³ Children’s Law Center, *Custodial Power of Attorney and Revocation*, available at <https://www.childrenslawcenter.org/resource/custodial-power-attorney-and-revocation>.

²⁴ D.C. MUN. REGS. tit. 22, § 22-B600.5.

²⁵ D.C. MUN. REGS. tit. 22, § 22-B600.4.

²⁶ D.C. MUN. REGS. tit. 22, § 22-B602.3.

²⁷ D.C. MUN. REGS. tit. 22, § 22-B602.4.