



Karen Saylor, MD, President | Jeffrey S. Barkin, MD, President-Elect | Erik N. Steele, DO, FAAFP, Chair, Board of Directors
Andrew B. MacLean, JD, CEO | Dan Morin, Director of Communications & Government Affairs

TO: The Honorable Anne Carney, Chair
The Honorable Thom Harnett, Chair
Members, Joint Standing Committee On Judiciary

FM: Dan Morin, Director of Communications and Government Affairs

DATE: May 13, 2021

RE: **Oppose**

LD 1292— An Act Regarding the Parental Right To Direct the Health Care of Children

The [Maine Medical Association](#) is the state's largest professional physician organization representing more than 4300 physicians, residents, and [medical students](#) across all clinical specialties, organizations, and practice settings is submitting testimony in support of LD 1292— An Act Regarding the Parental Right To Direct the Health Care of Children.

Whether minors have the capacity and the right to make important decisions about health care has been well established in federal and state policy. The process and minors' rights to consent to certain health care treatment, and the parental involvement in most aspects of medical care for minors is well established in Maine law. LD 1292 seemingly seeks to expand parental, or guardian, access and control over a minors' health care decisions.

Unless there is a compelling reason to change long time established and comprehensive Maine statutes concerning the medical treatment of minors to which the MMA is unaware, we urge the committee to vote Ought Not to Pass and maintain the status quo.

Thank you for the opportunity to offer comments and information. We would be happy to provide additional information and/or physician representation, if available, for more information before or during the work session. Thank you.

The following is a list of some relevant statutory citations in Maine law along with MMA developed summaries. The list does not include every statutory reference.

Minor's Rights to Health Care Treatment

Usually, a physician must obtain consent to treatment of a minor from a parent or guardian, although the minor generally is involved in the process. Most of the time, the minor and both parents are involved in a family discussion about the treatment, but situations involving divorced parents can present challenges to the physician that are more practical than legal. In most cases of divorce, the parents have "shared parental rights and responsibilities," meaning that both parents have the right to be involved in the major decisions of the child's life, including decisions about health care treatment.

[19-A MRSA §1501 \(5\)](#). If a parent is claiming exclusive rights to make decisions about a minor's medical treatment, the physician should ask for documentation such as a divorce judgment awarding "sole parental rights and responsibilities" to one parent, an order terminating the parental rights of one parent, or other court order limiting a parent's rights to participate in the medical decision-making process.

While the general rule is that physicians must obtain informed consent to treatment for minors from their parents, there are exceptions to the rule. *Some* minors may provide consent to *all* types of health care treatment and *all* minors may provide consent to *some* types of health care treatment. A minor may give consent to all types of health care treatment if the minor:

- A. Has been living separately from parents or legal guardians for at least 60 days and is independent of parental support;
- B. Is or was legally married;
- C. Is or was a member of the Armed Forces of the United States;
- D. Has been emancipated by the court pursuant to Title 15, section 3506-A.

[\(22 MRSA §1503\)](#)

All minors may give consent to certain sensitive types of treatment where an obligation of parental consent may be an obstacle to treatment and, therefore, may not be in the best interest of the minor. These types of treatment include:

- A. Family planning services, including contraception, pregnancy testing, and emergency contraception ([22 MRSA §1908](#));
- B. Treatment of venereal disease or drug alcohol abuse in the hospital setting, but parental consent is required if the hospitalization continues for more than 16 hours ([22 MRSA §1823](#));
- C. Collection of sexual assault evidence through a sexual assault forensic examination ([22 MRSA §1507](#));
- D. Treatment of venereal disease or drug or alcohol abuse by a physician ([32 MRSA §§2595](#));
- E. Treatment of drug or alcohol abuse or for emotional or psychological problems ([22 MRSA §1502](#));
- F. Consent to give blood by a 17-year-old ([22 MRSA §1502-A](#));

G. Certain services provided by alcohol and drug counselors, social workers, or psychologists ([32 MRSA §§6221, 7004, 3817](#)).

A minor may consent to an abortion if she accomplishes one of the following:

- A. Provides the physician performing the abortion with her informed written consent and the written consent of a parent or another adult family member such as an aunt or grandmother;
- B. Provides the physician performing the abortion with her informed written consent and receives abortion counseling. The counseling may be provided by a physician or from an approved counselor, who may be a psychiatrist, a psychologist, a social worker, an ordained clergy member, a physician's assistant, a nurse practitioner, a guidance counselor, a registered nurse, or a licensed practical nurse; or
- C. Provides the physician performing the abortion with her informed written consent and a court order.

([22 MRSA §1597-A](#)).

The physician retains discretion to notify the parents if he or she believes that failure to do so would "seriously jeopardize the health of the minor or would seriously limit the practitioner's or provider's ability to provide treatment." [22 MRSA §1505 \(2\)](#). In general, a minor who consents to health care treatment is entitled to the same confidentiality rights as adults and is financially responsible to the physician for that treatment. [22 MRSA §§1505\(1\)](#) and [1506](#). A physician who takes reasonable steps to determine that a minor is entitled to consent to health care treatment is immune from liability for a parent's claim that the physician provided care without parental consent. [22 MRSA §1504](#).

Definition

Minor: means a person under 18 years of age.

[22 MRSA §1501 \(3\)](#)

Consent, General

In addition to the ability to consent to treatment for health services as provided in sections 1823 and 1908 and Title 32, sections 2595, 3292, 3817, 6221 and 7004, a minor may consent to treatment for abuse of alcohol or drugs or for emotional or psychological problems.

[22 MRSA §1502](#)

Consent to give blood

A minor may consent to give blood if the minor is at least 17 years of age, notwithstanding any other provision of law.

[22 MRSA §1502-A](#)

Authority (to Consent)

A minor may give consent to all medical, mental, dental and other health counseling and services if the minor:

- A. **Living separately; independent of parental support-** Has been living separately from parents or legal guardians for at least 60 days and is independent of parental support;
- B. **Married-** Is or was legally married;
- C. **Armed Forces-** Is or was a member of the Armed Forces of the United States; or
- D. **Emancipated-** Has been emancipated by the court pursuant to Title 15, section 3506-A.

[22 MRSA §1503](#)

Good faith reliance on consent

A health care practitioner or health care provider who takes reasonable steps to ascertain that a minor is authorized to consent to health treatment as authorized in section 1503 and who subsequently renders treatment in reliance on that consent is not liable for failing to have secured consent of the minor's parent or guardian prior to providing health care services to the minor.

[22 MRSA §1504](#)

Confidentiality; notification

A. Confidentiality- Except as otherwise provided by law, a minor who may consent to health care services, as provided in this chapter or by other provision of law, is entitled to the same confidentiality afforded to adults.

B. Parental notification- A health care practitioner or health care provider may notify the parent or guardian of a minor who has sought health care under this chapter if, in the judgment of the practitioner or provider, failure to inform the parent or guardian would seriously jeopardize the health of the minor or would seriously limit the practitioner's or provider's ability to provide treatment.

[22 MRSA §1505](#)

Financial responsibility

Unless the parent or guardian expressly agrees to assume full or partial responsibility, a minor who consents to health care services as provided in this chapter is responsible for the costs of those services. A minor may not be denied benefits or services to which the minor is entitled from a health care practitioner, health care provider, insurer or public agency because the minor has given the consent for those services as provided in this chapter.

[22 MRSA §1506](#)

Consent for sexual assault forensic examination

Notwithstanding the limitations set forth in section 1503, a minor may consent to health services associated with a sexual assault forensic examination to collect evidence after an alleged sexual assault.

[22 MRSA §1507](#)

Consent to a minor's decision to have an abortion

Except as otherwise provided by law, no person may knowingly perform an abortion upon a pregnant minor unless:

- A. The attending physician has received and will make part of the medical record the informed written consent of the minor and one parent, guardian or adult family member;
- B. The attending physician has secured the informed written consent of the minor as prescribed in subsection 3 and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent;
- C. The minor has received the information and counseling required under subsection 4, has secured written verification of receiving the information and counseling and the attending physician has received and will make part of the medical record the informed written consent of the minor and the written verification of receiving information and counseling required under subsection 4; or

D. The Probate Court or District Court issues an order under subsection 6 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

1. To the minor majority rights for the sole purpose of consenting to the abortion and the attending physician has received the informed written consent of the minor; or
2. To the minor consent to the abortion, when the court has given its informed written consent and the minor is having the abortion willingly, in compliance with subsection 7.

[22 MRSA §1597-A \(2\)](#)