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Sent: Thursday, February 2, 2023 9:08 PM
To: Martin LaLonde
Subject: information on minor consent to healthcare

To Members of the House Judiciary Committee:

I have heard the questions the committee is asking about minor consent to health care.

The Vermont Medical Society provides information for our members on the topic of minor consent in our Guide to Health Care Law (pages 59-65, authored by health care attorneys from Primmer, Piper Eggleston & Cramer):

https://vtmd.org/client_media/files/Vermont%20Guide%20to%20Health%20Care%20Law%20-%20December%202022%20Edition%20Final%201.4.2023.pdf.

The general rule is that individuals must be 18 to consent to medical care, otherwise a parent or guardian must consent to the care. However there are some exceptions, for example if the minor is emancipated or if state law allows a minor to consent to specific services. This is the case for reproductive health care services, such as abortion and contraception. I've pasted some relevant excerpts from our Guide to Law below that discuss this scenario and list the factors to consider in determining if the minor has the capacity to consent to this care.

On the other hand, because there is not an exception in statute for hormonal or surgical gender affirming services, parental consent is currently required for these services – and this is consistent with current clinical practice to involve the family in these decisions.

Please let me know if I can help further and I would be happy to address additional questions when I am in the committee on Friday afternoon.

Jessa

Is parental informed consent required before a minor can terminate a pregnancy?

Vermont state law recognizes the fundamental right of every individual to choose to continue a pregnancy or have an abortion and thereby permits unemancipated minors to give informed consent to abortions and related medical treatment. In determining whether the minor's informed consent is sufficient, health care providers should carefully assess whether the minor understands the nature and risks of the proposed treatment and is capable of making an informed, rational choice. The following factors should be considered when making such an assessment: age of the minor, ability, experience, education, maturity level, conduct and demeanor. If the provider determines that notifying the parent or guardian is in the best interests of the minor, this should be discussed with the minor. It is always important to document decisions and the basis for the decision. See 18 V.S.A. § 9493, et seq.

Private insurance may or may not cover abortions and related medical treatment. If private insurance is used, there is a risk that the person who holds the insurance policy, which may be a parent or guardian, will receive an explanation of the services provided. Vermont Medicaid is

required by court order to cover abortions. See *Doe v. Celani*, No. S81-84CnC (Vt. Super. Ct. May 26, 1986). Further, programs that are funded by federal Title X family planning service grants provide individuals of all ages with family planning and related preventive health services

Is parental informed consent required before a minor can receive contraceptive devices or medications?

Vermont state law recognizes the fundamental right of every individual to choose or refuse contraception and thereby permits unemancipated minors to give informed consent to medical treatment necessary to obtain contraceptive devices and medications. In determining whether the minor's informed consent is sufficient, health care providers should carefully assess whether the minor understands the nature and risks of the proposed treatment and is capable of making an informed, rational choice. The following factors should be considered when making such an assessment: age of the minor, ability, experience, education, maturity level, conduct and demeanor. If the provider determines that notifying the parent or guardian is in the best interests of the child, this should be discussed with the minor. It is always important to document decisions and the basis for the decision. See 18 V.S.A. § 9493, et seq.

Vermont law requires that insurance providers, including Medicaid and other state public health care assistance programs, cover contraceptive services. 8 V.S.A. § 4099c. There is a risk that if a minor consents to contraceptive care and uses private insurance to pay, that the person who holds the insurance policy, which may be a parent or guardian, will receive an explanation of the services provided. Programs that are funded by federal Title X family planning service grants provide individuals of all ages with family planning and related preventive health services.

Who can give informed consent to health care when the minor's parents are divorced?

In general, both parents can make health care decisions for the child. If the parents are divorced, the informed consent of either parent may be assumed to be sufficient. That said, every divorce decree is different and there are situations where a judge has entered an order in which one or both of the parents is no longer authorized to make health care decisions for their child. In those situations, health care professionals are obligated to follow the judge's order. If one parent claims that they have exclusive control of medical decision-making, that parent should be asked to present relevant family court documents.