A SURVEY OF
IOWA LAW

Minors and Risk

Frequent Liability Concerns in the Healthcare Setting

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Important Note

The information provided herein does not, and is not intended to constitute legal, medical, or other professional advice; instead, this information is for general informational purposes only. The specifics of each state's laws and the specifics of each circumstance may impact its accuracy and applicability; therefore, the information should not be relied upon for medical, legal, or financial decisions and you should consult an appropriate professional for specific advice that pertains to your situation.

INTRODUCTION

Modern healthcare requires physicians, nurses, and other allied healthcare professionals to understand the legal landscape. Acquiring this understanding is challenging when the patient is an adult, but can raise even more complex questions when the patient is a minor. This guide is designed to increase a healthcare professional's understanding when legal issues involving minors arise. We hope that this guide will be a helpful resource for some of the more common questions.

This guide cannot address every situation that healthcare professionals are likely to encounter during the course of a minor patients' care. Because each patient's case is different and raises unique facts, we encourage you to seek legal counsel when you have questions that are beyond the scope of our discussion.

Finally, laws undergo periodic change. This guide presents legal discussion that is up-to-date and accurate as of December 2024. When making decisions involving the care and treatment of minors, please contact your medical professional liability insurance carrier and/or your legal counsel to ensure that the information contained in this guide has not changed.

LEGAL DISCUSSION

Competence

Parents are entitled to make decisions regarding the care, residence, religious upbringing, education, and medical care for their children during minority.[1] In general, a healthcare provider must obtain the consent of a parent or guardian before treating a minor child. Minors are authorized by Iowa law, however, to independently consent to certain medical care and services without parental consent. As addressed in greater detail below, even in these special circumstances, the healthcare provider must also determine if the minor has the capability to make an informed decision to seek and receive medical services.[2]

Who Is a Minor?

A person is a minor until they reach the age of 18, but all minors attain their majority by marriage.[3] In addition, emancipated minors and minors incarcerated as adults are deemed to have attained the age of majority for making decisions and giving consent to medical care, related services, and treatment during the period of the person's incarceration.[4]

Healthcare providers are generally safe to presume that any person 18 or older is competent to make his or her own decisions regarding medical care and treatment.[5]

Rights and Duties of Parents, Guardians, and Custodians

The "parent-child relationship" means the relationship between a parent (by birth or adoption, and regardless of marital status) and child recognized by law as conferring certain rights and privileges, and imposing certain duties. The rights, duties, and privileges of a parent include the rights and duties of guardians and custodians.[6]

A "guardian" means a person who is not the parent of a minor child, but who has been appointed by a court having jurisdiction over the minor child to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child.[7] A court or a juvenile court may also serve as a guardian.

A guardian can make any decision that the parents could have made when the parent-child relationship existed, including the right and duty to consent to medical, psychiatric, or surgical treatment, and to serve as custodian unless another person has been appointed custodian.[8]

A "custodian" means a stepparent or a relative within the fourth degree of consanguinity to a minor child who has assumed responsibility for that child, a person who has accepted a release of custody, or a person appointed by a court or juvenile court having jurisdiction over a child.[9]

The rights and duties of a custodian with respect to a child are subject to residual rights and duties remaining in a parent or guardian and includes the right to consent to emergency medical care, including surgery, and the right to sign a release of medical information to a health professional.[10]

"Termination of parental rights" is a complete severance and extinguishment of a parent-child relationship between one or both living parents and the child.[11] In Iowa, termination occurs either in a private action or in a proceeding involving the Department of Human Services, each under different statutory framework with different grounds and standards for judicial determination. A parent cannot permanently alter the parent-child relationship except as ordered by a court in accordance with the provisions of the state statutes.[12]

A "guardian ad litem" is an independent practicing attorney appointed by the court in most termination actions to represent the best interests of the child.[13]

- In a private action, the role of a guardian ad litem is to independently investigate the interests of the child. The guardian ad litem does not testify, but the guardian ad litem may call witnesses to testify relevant to the best interest of the child.[14]
- In a state termination action, the guardian ad litem submits a written report to the court after conducting a home visit and interviewing the child, parents and/or guardian and custodian, medical and mental health providers, and other service providers. The court's order appointing the guardian ad litem specifically grants them authority to inspect and copy medical records and interview the person providing such records, along with the authority to attend meetings with medical or mental health providers regarding the minor child if deemed necessary by the guardian ad litem.[15]

[1] Iowa Code § 601.1(2)
[2] Cowman v. Hornaday, 329 N.W.2d 422,424-26 (Iowa 1983); Pauscher v. Iowa Methodist Med. Ctr., 408 N.W.2d 355, 360 (Iowa 1987)
[3] Iowa Code § 599.1
[4] Iowa Code §§ 232C.4, 599.1
[5] Iowa Code § 147.137; Morgan v. Olds, 417 N.W.2d 232, 235 (Iowa Ct. App. 1987)
[6] Iowa Code §§ 600A.2(16), 601.1
[7] Iowa Code § 600A.2(10)
[8] Iowa Code § 600A.2B
[9] Iowa Code § 600A.2(8)
[10] Iowa Code § 600A.2A
[11] Iowa Code § 600A.2(19)
[12] Iowa Code § 600A.4
[13] Iowa Code §§ 232.89(2), 600A.2(11), 600A.6(2)
[14] Iowa Code § 600A.6(2)(b)
[15] Iowa Code § 232.2(25)

A court must hold a hearing before terminating a parent's rights and may only terminate parental rights upon making findings that one or more statutory grounds for termination exists by clear and convincing evidence, and that the termination promotes the child's best interests. Grounds for termination include a parent's request, abandonment, failure to financially contribute to support the child, imprisonment for five or more years, and certain circumstances involving crimes applicable to the parent-child relationship (e.g. domestic abuse, child abduction, child abuse, or sexual abuse leading to the conception of the minor child).[16]

Unmarried or Divorced Parent and Custody Disputes

When a child's parents are unmarried and seek a court order, or upon the filing of a divorce, a court determines legal custody and physical care of the child. The standard for the court's determination is the "best interest of the child."[17]

"Joint legal custody" means an award of legal custody of a minor child to both parents jointly under which they share legal custodial rights and responsibilities, including equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction. A court may award joint legal custody without necessarily ordering joint physical custody. Physical custody is the determination of parenting time and does not affect a parent's right and responsibilities as a joint legal custodian of the child, even if only one parent has physical care. When parents agree to joint legal custody and joint physical care, they must submit a parenting plan to the court that includes details as to how they will resolve major disagreements impacting the child, including medical decisions.[18]

Absent an agreement by the parents, to assist in its legal and physical custody determination, the Court may appoint a practicing attorney as the "guardian ad litem" to represent the best interests of the child and/or an attorney to represent the minor child—the same person cannot serve in both roles. Neither attorney may testify in court nor submit a report, but they can call witnesses, offer evidence, and question witnesses.

- Among other duties, both the guardian ad litem and the child's attorney, interview the parents, medical and mental health providers, and other service providers.
- The court's order appointing the guardian ad litem and the order appointing the child's attorney specifically grants the authority to inspect and copy medical records and interview the person providing such records, along with the authority to attend meetings with medical or mental health providers regarding the minor child if deemed necessary by the guardian ad litem or the child's attorney.
- The parent, guardian, or custodian is statutorily required to execute any release necessary to allow disclosure by medical and mental health providers to the guardian ad litem or to the child's attorney.[19]

Unless otherwise ordered by the court in a custody decree, both parents, regardless of physical care or legal custodianship, have legal access to information concerning the child, including but not limited to medical, educational, and law enforcement records.[20] However, Iowa courts have clarified that such "legal access" to a child's medical records and mental health records does not grant either parent an "absolute right" to those records because the best interests of the child always prevail in the event of a dispute regarding access.[21]

Iowa's statutes do not permit a court to resolve disputes between joint legal custodians regarding medical decisions because they each have the right to equal participation and the courts have no authority to serve as an arbiter of specific disagreements between parents. If parents with joint legal custody cannot agree on a healthcare or mental health treatment, the status quo remains until such time as the parents reach an agreement or modify their custody arrangement.[22]

[16] Iowa Code §§ 232.116, 600A.1, 600A.7, 600A.8; In interest of T.Q., 519 N.W.2d 105, 106 (Iowa Ct. App. 1994)

[17] Iowa Code §§ 598.41, 600B.40

[18] Iowa Code § 598.41(5)

[19] Iowa Code §§ 598.12, 598.12A

[20] Iowa Code § 598.41(1)(e)

[21] Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, L.L.P., 764 N.W.2d 534, 538 (Iowa 2009); In re Marriage of Serrano, 972 N.W.2d 229 (Iowa Ct. App. 2021)

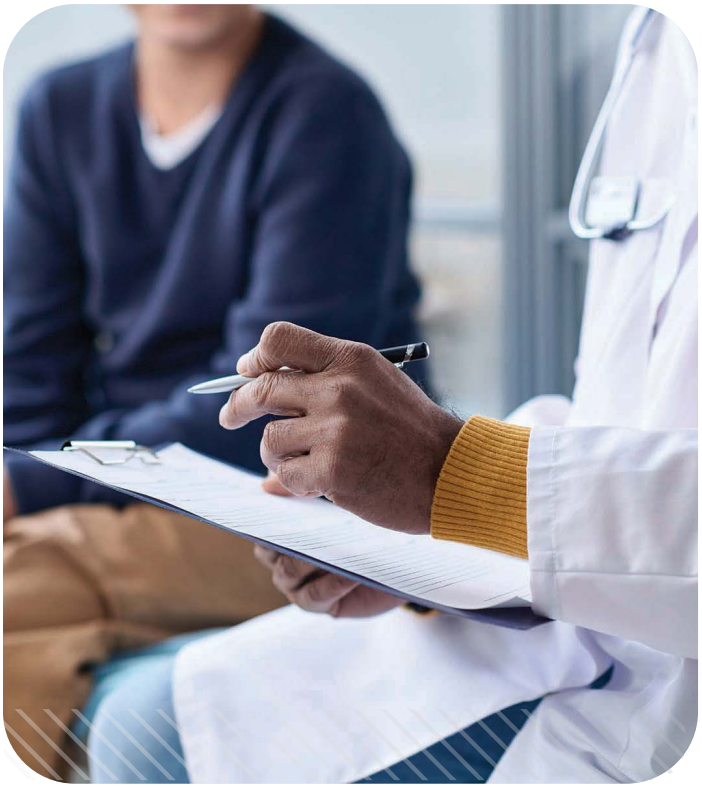
[22] In re Marriage of Frazier, 1 N.W.3d 775 (Iowa 2024)

LEGAL DISCUSSION

Delegation of Parental Power

If a child's parent or guardian will be absent for an extended period of time, they may, as the "principal," execute a power of attorney (POA) to grant another person, their "agent," the authority to act for them. The statutory form POA includes an option for the principal to delegate "personal and family maintenance," which encompasses all tasks necessary to provide proper care for their minor children and includes the authority to make medical decisions.[23] Providers should carefully review POAs when treating a minor to ensure it includes "personal and family maintenance" or is a general power of attorney granting the authority to do all acts that the principal could do, which on the statutory form is "All Preceding Subjects."[24]

A POA under the Uniform Deployed Parents Custody and Visitation Act allows a service member who is deployed or has been notified of impending deployment to delegate all or part of their parental custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility, or if a court order prohibits contact between the child and the other parent.[25]



[23] Iowa Code § 633B.213
[24] Iowa Code § 633B.301
[25] Iowa Code § 598C.204; 598C.102(8)
[26] 45 CFR § 164.502(g)(3)
[27] 45 C.F.R. § 164.502(g)(3)(i)
[28] 45 C.F.R. § 164.502(g)(3)(ii)(A)
[29] 45 C.F.R. § 164.502(g)(3)(ii)(B)
[30] 45 C.F.R. § 164.502(g)(3)(ii)(C)
[31] 45 C.F.R. § 164.502(g)(5)

Minors and HIPAA

As a general rule, parents may access their children's medical records without any special authorization as the minor's personal representative under the Health Insurance Portability and Accountability Act (HIPAA).[26] A parent's access to their child's records flows from their ability to make medical decisions for them.

There are three exceptions where a parent would not be considered a minor's personal representative under HIPAA, and the minor has the authority to act as an individual with respect to protected health information pertaining to a healthcare service. These exceptions are:

- When the minor consents to the service and the consent of the parent is not required under state or other applicable law;
- When the minor obtains care at the direction of a court or someone appointed by a court; and
- When the parent agrees to confidentiality between the healthcare provider and the minor with respect to such healthcare service.[27]

However, even in these circumstances, a covered entity may disclose or provide access to a minor's protected health information when a state or other applicable law permits or requires such parental access.[28] If an applicable provision of state or other law prohibits such disclosure, a covered entity may not disclose or provide access to an unemancipated minor's protected health information.[29] If state or other applicable law is silent on a parent's right of access in a specific instance, a covered entity may provide or deny access if such action is consistent with state or other law, provided that such decision must be made by a licensed healthcare professional, in the exercise of professional judgment.[30]

Finally, as is the case with respect to all personal representatives under the HIPAA regulations, a covered entity may choose not to treat a parent as a personal representative of the patient when:

- The provider has a reasonable belief that
  - **The patient has been or may be subjected to domestic violence, abuse, or neglect by such person; or**
  - **Treating such person as the personal representative could endanger the patient; and**
- The provider, in the exercise of professional judgment, decides that it is not in the best interest of the patient to treat the parent as the patient's personal representative.[31]

When Can a Minor Consent to Medical Care Without Parental Consent?

Beyond parents and those who have been granted parental power as a guardian or custodian or by a power of attorney as set forth above, healthcare providers should assume that no other person possesses the authority to authorize a minor's medical care. However, minors can provide consent for medical treatment under limited circumstances:

A. Emancipation

"Emancipation" is the act of freeing a child from the custody of the parent and alleviating the parent from all legal obligations of support.[32] A minor who desires to become emancipated may file a petition for an order of emancipation if the minor is 16 or older, is a resident of Iowa, and is not in the care, custody, or control of the state.[33]

Emancipation does not require a formal act; however, it is not presumed, and is determined by the court based on the facts and circumstances in each case. A minor will not be found emancipated solely on the basis of becoming pregnant or giving birth to a child.[34]

An emancipation order has the same effect as a minor reaching the age of majority, including the right to consent to medical, dental, or psychiatric care.[35]

B. Marriage

All minors attain their majority by marriage and as a result may consent to medical care, related services, and treatment.[36] Minors may legally marry at age 16 or 17 in Iowa with the consent, certified in writing, of their parent(s) or guardian and approval of the certificate of consent by a district court judge. A judge may approve the marriage without the consent of a parent or guardian if the parents are dead, incompetent, or cannot be located and the minor has no guardian or if the judge finds that consent of a parent or guardian has been unreasonably withheld.[37]

C. Prenatal, Delivery, and Post-Delivery Care

Iowa has no specific statute allowing minors to consent to pregnancy related care beyond statutory requirements for abortion-related decisions, which are examined in detail below. However, the U.S. Supreme Court has held that the right of privacy in connection with decisions affecting procreation extends to minors as well as adults.[38]

D. Minors Who Are Parents

Iowa lacks a statute or case dealing specifically with a minor parent's right to consent to their own child's treatment. The Fourteenth Amendment's Due Process Clause of the U.S. Constitution, however, has a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests, including parents' fundamental right to make decisions concerning the care, custody, and control of their children.[39] This constitutionally protected right is codified under Iowa law.[40] Iowa law also recognizes that a minor may retain parental rights.[41]

E. Birth Control

Under Iowa law, a person, including a minor, may apply for contraceptive services directly to a licensed physician or a family planning clinic. A minor shall give written consent to receive the services and such consent is not subject to later disaffirmance (a challenge by the minor or someone else) by reason of minority.[42]

Clinics supported by federal Title X funds (such as Planned Parenthood) are required to provide services without regard to age or marital status on a confidential basis.[43] In addition, under federal law, "medical assistance" includes payment of part or all of the costs of programs, such as Medicaid, that must include payment of all or part of the cost of family planning services and supplies furnished to individuals of child-bearing 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.[44]

F. Sexually Transmitted Infections, Including HIV

A minor may give consent to their own to medical care or services for the prevention, diagnosis, or treatment of a sexually transmitted disease or infection by a hospital, clinic or healthcare provider—without the consent of a parent, custodian, or guardian. A physician, physician assistant,

[32] In re H.G., 601 N.W.2d 84, 86 (Iowa 1999), Black's Law Dictionary
[33] Iowa Code § 232C.1
[34] Bedford v. Bedford, 752 N.W.2d 34 (Iowa Ct. App. 2008)
[35] Iowa Code § 232C.4
[36] Iowa Code § 599.1(1)
[37] Iowa Code § 595.2(4)
[38] Carey v. Population Servs. Int'l, 431 U.S. 678, 693 (1977)
[39] Troxel v. Granville, 530 U.S. 57, 65 (2000)
[40] Iowa Code § 601.1(2)
[41] Iowa Code § 135L.2(1)(a)(1)
[42] Iowa Code § 141A.7(3)
[43] 42 CFR § 59.5(a)(4), 59.10(a)
[44] 42 USC § 1396d(a)(4)(C)

or advanced registered nurse practitioner must provide or supervise the related medical care or services.[45]

"Sexually transmitted disease or infection" is defined by the state epidemiologist in accordance with federal guidelines, and currently includes, but is not limited to, acquired immunodeficiency syndrome (AIDS), chlamydia, gonorrhea, hepatitis B, hepatitis C, human immunodeficiency virus (HIV), human papillomavirus (HPV), and syphilis.[46]

Iowa is the only state that requires a testing facility to notify a minor's legal guardian upon confirmation of a positive HIV test result.[47] Providers must notify a minor and obtain their written consent to perform the test, including that the provider will notify their legal guardian if the test is confirmed as positive, prior to testing. A health facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification requirement.[48]

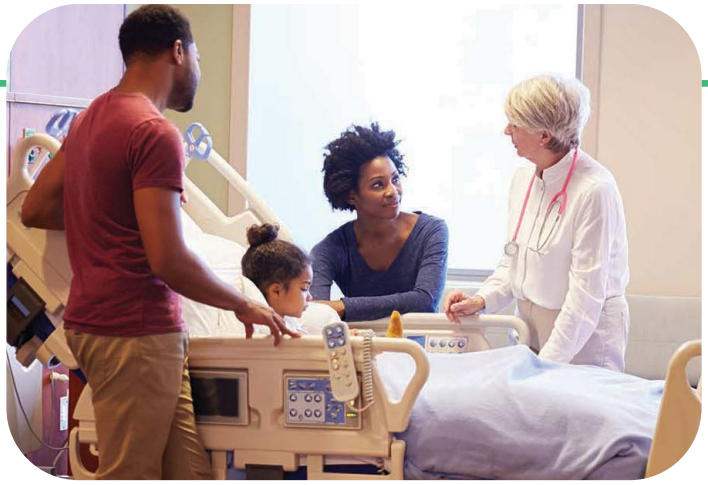
G. Substance-related Disorder

Minors may give legal consent to their own care related to the use of drugs or alcohol. A minor themselves may apply for voluntary treatment or rehabilitation services to a facility or to a licensed physician or a mental health professional, or the minor's parent, legal guardian or other legal representative may make the application. If the minor personally makes an application for treatment or rehabilitation, the fact that the minor sought or received such services cannot be reported or disclosed to the parents or legal guardian of the minor without the minor's consent. If the minor was the original applicant, they can request discharge from an inpatient facility on their own; otherwise, a parent, legal guardian, or legal representative must request the discharge.[49]

H. Youthful Offenders

A person who is less than eighteen years old, but who is tried, convicted, and sentenced as an adult and committed to the custody of the director of the department of corrections shall be deemed to have attained the age of majority for purposes of making decisions and giving consent to medical care, related services, and treatment during the period of the person's incarceration.[50]

[45] Iowa Code § 139A.35
[46] Iowa Code § 139A.2(24); Iowa Admin. Code § 641-1.1(139A)
[47] Iowa Code § 141A.7(3)
[48] Iowa Admin. Code § 641-11.3(139 A, 141A)
[49] Iowa Code § 125.33
[50] Iowa Code § 599.1



Emergency Care & Treatment

Healthcare providers generally may render emergency medical, surgical, hospital or health services for minors of any age without prior consent from a legally authorized individual. By state statute, a physician, physician's designee, advanced registered nurse practitioner, physician assistant, registered nurse, licensed practical nurse, or emergency medical care provider is not subject to civil liability solely for failure to obtain consent before providing emergency care.[51]

Providers are also generally protected from civil liability for an act of commission or omission during such emergency care if the provider deems the person to be in immediate danger of serious injury or loss of life. Iowa law protects any appropriately certified emergency medical care provider, registered nurse, licensed practical nurse, or physician assistant, while rendering emergency medical care under the responsible supervision and control of a physician; the supervising physician, physician designee, advanced registered nurse practitioner, or any hospital, or upon the state, or political subdivision, or the employees of any of these entities are also insulated from civil liability. However, a person who acts recklessly, either by commission or omission, is not relieved of liability.[52]

[51] Iowa Code § 147A.10(2)
[52] Iowa Code § 147A.10(3)

Abortion

Like many other states, the status of Iowa's abortion laws recently changed and may continue to rapidly evolve. As of July 2024, physicians cannot perform an abortion if there is a detectable heartbeat (commonly referred to as the "six-week ban"). The exceptions to the limitation include cases of a medical emergency necessary to save the pregnant person's life, fetal abnormality incompatible with life, and in pregnancy resulting from rape or incest if certain reporting criteria is met.[53] Except for medical emergencies, a physician performing an abortion must: (1) obtain written consent from the pregnant woman that she has had an ultrasound and an opportunity to view the image and hear the heartbeat, (2) follow a 24-hour waiting period, and (3) provide information to the pregnant woman regarding her options based on materials provided by the department of health and human services.[54]

A. Parental Notice and Court Involvement

The licensed physician who will perform the abortion on a pregnant minor must provide at least 48 hours prior notification to a parent of the minor, either in person or by restricted certified mail mailing to the parent's residence.

No parental notice is required for a pregnant minor to have an abortion in any of the following circumstances:

- The abortion is authorized in writing by a parent entitled to notification.
- The minor declares, in a written statement submitted to the attending physician, a reason for not notifying a parent, and a reason for notifying a grandparent in lieu of notifying the parent.
- The attending physician certifies in writing that a medical emergency exists which necessitates the immediate performance of an abortion, and places the written certification in the medical file of the pregnant minor. A "medical emergency" is defined as a condition which, based upon a physician's judgment, necessitates an abortion to avert the pregnant minor's death, or for which a delay will create a risk of serious impairment of a major bodily function.
- The pregnant minor declares that she is a victim of child abuse, the person responsible for the care of the child is a parent of the child and either the abuse has been reported, or a parent of the child is named in a report of founded child abuse.
- The pregnant minor declares that she is a victim of sexual abuse and has reported the sexual abuse to law enforcement.
- The pregnant minor petitions the court and obtains a court order authorizing waiver of the notification requirement.

A licensed physician who knowingly performs an abortion in violation of the notice requirement (subject to the statutory exceptions) is guilty of a serious misdemeanor.[55]

B. Decision-making Assistance Program

Iowa law encourages pregnant minors to involve their parents and the father in completing a decision-making assistance program (the "program"). The licensed physician who will perform the abortion on a pregnant minor must offer the program during the initial appointment, and must obtain a completed certification form by pregnant minor before performing an abortion. Although the minor is not required to participate in the program, the provider must offer the program and obtain a certification form that the pregnant minor was offered a viewing of the video and the written decision-making materials described below.

The program includes a video that provides information regarding the various options available to a pregnant minor with regard to the pregnancy, including a decision to continue the pregnancy to term and retain parental rights following the child's birth, a decision to continue the pregnancy to term and place the child for adoption following the child's birth, and a decision to terminate the pregnancy through abortion. Written materials accompany the video and include a listing of agencies, programs, and services available to the pregnant minor for each of the options covered in the video.[56]

[53] Iowa Code §§ 146E.1(4), 146E.2(2)(a); Iowa Admin. Code § 653-13.17

[54] Iowa Code § 146A.1

[55] Iowa Code §§ 135L.1, 135L.3

[56] Iowa Code § 135L.2

LEGAL DISCUSSION

Child Abuse and Reporting

A. Reporting Requirements

Every healthcare practitioner who in the scope of professional practice, examines, attends, or treats a child under age 18 whom the practitioner reasonably believes has been abused, or is infected with a sexually transmitted disease, must make an oral report to the department of human services within 24 hours.[57] Practitioners who reasonably believe that a child needs immediate protection must also make an oral report to law enforcement.[58]

As mandatory reporters, practitioners may take photographs, x-rays, or other physical tests of a child that would provide medical indication of child abuse allegations and shall notify both: (1) the person in charge of their medical institution or facility, if applicable, of the need for such steps, and (2) the department of health and human services that such photographs, x-rays, or tests have been performed. Practitioners who report, photograph, x-ray, or perform other medically relevant tests in good faith or otherwise aid and assist in an assessment of a child abuse report, have immunity from any liability, civil or criminal.[59]

B. Child Abuse Defined

Reportable child abuse is defined as the following, which occurs as a result of an act or omission by a person responsible for the care of the child:

- Any nonaccidental physical injury, or injury which is at variance with the history given of it,
- Any mental injury to intellectual or psychological capacity as evidenced by an observable and substantial impairment in a child's ability to function within their normal range of performance and behavior, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional,
- Failure to provide adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for a child's health and welfare, when financially able to do so or if offered financial or other reasonable means to do so within the past 5 years,
- The commission of bestiality in the presence of a child by a person who resides in a home with a child,
- Knowingly allowing a registered sex offender to supervise, have custody over, or have unsupervised access to a child under the age of 14 or a child with a physical or mental disability (unless the registered sex offender is the child's parent, married to the child's parent, or is a child living in the residence),
- Knowingly allowing access to obscene material or knowingly disseminating or exhibiting such material to a child, and
- The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of commercial sexual activity.[60]

C. Sexual Offenses and Child Abuse

Child abuse also includes sexual offenses by any person who:

- Commits incest with a child;
- Allows, permits, or encourages a child to engage in prostitution;
- Knows or intends to preserve a visual depiction of a minor in a prohibited sexual act or the simulation of a sexual act; or
- Commits sexual abuse as defined below.[61]

Sexual abuse is broadly defined as any sex act with a child under age 14.[62] It is also reportable child abuse when a sex act with a child under age 18:

- Leads to serious injury of the child, occurs by displaying a dangerous weapon in a threatening manner, occurs by force or against the child's will or while the child is under the influence of a controlled substance or is otherwise mentally or physically incapacitated or helpless, or
- Occurs when the other person is a member of the same household, is related by blood or affinity to the fourth degree, is in a position of authority over the minor and uses such authority to coerce the child, or is more than 4 years older than the child.[63]

A "sex act" includes any sexual contact between two or more persons by any of the following:

- Penetration of the penis into the vagina or anus.
- Contact between the mouth and genitalia or mouth and anus by contact between the genitalia of one person and the genitalia or anus of another person.
- Contact between the finger, hand, or other body party of one person and the genitalia or anus of another person, except in the course of examination or treatment by a licensed physician, physician assistant, chiropractor, or nurse.
- Ejaculation onto the person of another.
- By use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.
- The touching of a person's own genitals or anus with a finger, hand, or artificial sexual organ or other similar device at the direction of another person.[64]

[57] Iowa Code §§ 232.68(1), 232.69(1)(a)
[58] Iowa Code § 232.70(3)
[59] Iowa Code §§ 232.73, 232.77
[60] Iowa Code § 232.68(2)(a)
[61] Iowa Code § 232.68(2)(a)
[62] Iowa Code §§ 709.1(3), 709.3(1)(b), 702.5
[63] Iowa Code §§ 232.68(2)(a)(3), 709.2, 709.3, 709.4
[64] Iowa Code § 702.17

D. Drug-related Child Abuse

Child abuse includes the presence of an illegal drug in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child. It is also child abuse for the person responsible for the care of the child to unlawfully use, possess, manufacture, cultivate, or distribute a dangerous substance in the presence of a child, or to knowingly allow another person to engage in such conduct in the presence of a child.[65] "Dangerous substance" includes amphetamine, methamphetamine, cocaine, heroin, opium, opiates and derivatives.[66]

A practitioner may perform a medically relevant test on a child if the practitioner:

- Discovers physical or behavioral symptoms in a child of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs which were not prescribed by a health practitioner, or
- Determines through examination of the natural mother of the child that the child was exposed to such drugs in utero.

A "medically relevant test" is a test that produces reliable results of exposure to illegal drugs, including a drug urine screen test—the practitioner shall report any positive results of a test to the Department of Health and Human Services.[67]

E. Services for Victims

A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services may provide such services to a minor without prior consent or knowledge from the child's parent or guardian if the child:

- Has been sexually abused, as defined above, or
- Was the subject of a forcible felony, which is defined as any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, arson in the first degree, or burglary in the first degree.[68]

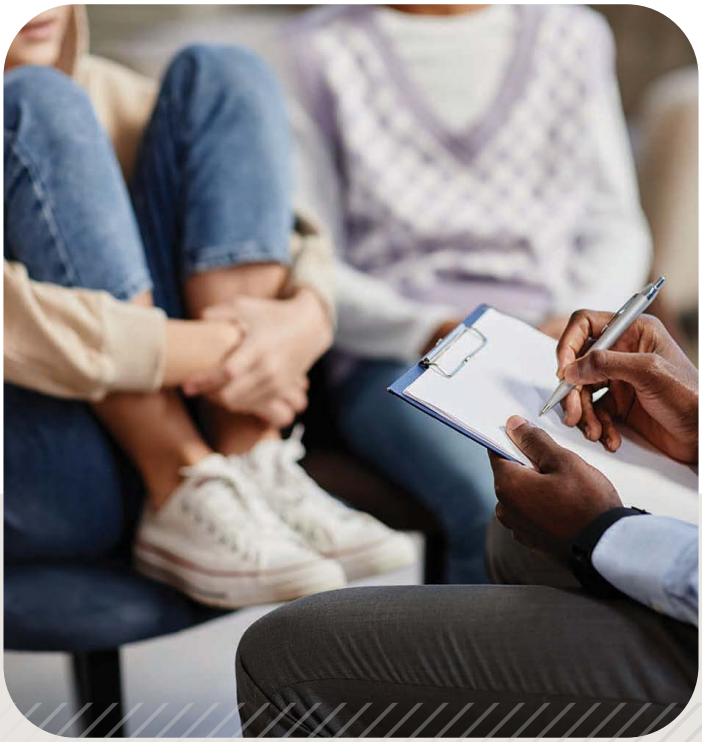
> ***Any healthcare provider who, in good faith, makes a report of sexual abuse has legal immunity from liability, civil or criminal.***

Mental Health

Any person who is mentally ill or has symptoms of mental illness may voluntarily apply for admission to a hospital for observation, diagnosis, care, and treatment; a minor's parent, guardian, or custodian may apply for admission of the minor as a voluntary patient. Upon receipt of an application for a minor, the chief medical officer must conduct separate prescreening interviews and consultations with the parent/guardian/custodian and the minor to assess the family environment and appropriateness of the application for admission. The chief medical examiner must notify the child orally and in writing of the right to object to the admission. If the chief medical officer determines that admission is appropriate but the minor objects, the parent must petition the juvenile court for approval before the minor is admitted.[69]

Blood Donation

A minor who is 16 may donate blood in a voluntary and non-compensatory blood program if they obtain written permission from their parent or guardian, and a minor who is 17 does not need permission of a parent or guardian.[70]



[65] Iowa Code § 232.68(2)
[66] Iowa Code § 232.96A(16)(f)
[67] Iowa Code §§ 232.73, 232.77(2)
[68] Iowa Code §§ 702.11, 915.35
[69] Iowa Code § 229.2
[70] Iowa Code § 599.6

COMMON SCENARIOS INVOLVING MINORS

We recognize that the law is somewhat confusing when healthcare providers are asked to apply the rules to everyday practice. The following illustrations show how the law operates.

ILLUSTRATION A:

Note from Parent

Factual Situation: A 15-year-old minor enters your office with a note from his parent authorizing treatment.

Question Posed: Can you provide treatment to the minor based on the consent contained in the note?

Recommendation: In this situation, the parent's written consent may not be "informed" since the consent was given before the healthcare provider formulated a diagnosis or treatment plan. Although the physician may be able to provide care and treatment based upon this written consent, the better course of practice is to contact the parent by telephone, when possible, to confirm the written authorization. If the parent is unavailable by phone, the healthcare provider should make the original note part of the patient's chart before providing care. The healthcare provider should also compare the minor's handwriting with the handwriting contained in the note.

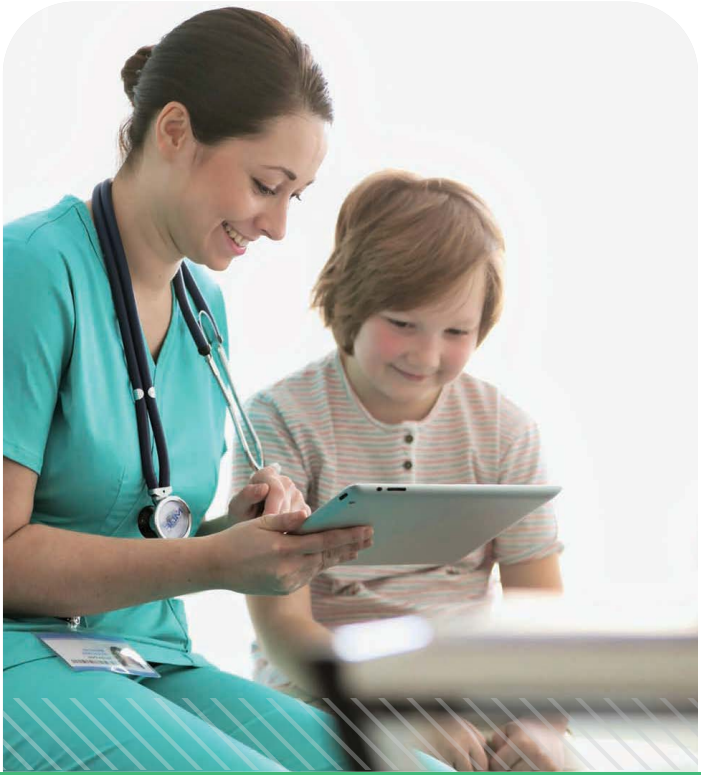


ILLUSTRATION B:

The Boat Trip

Factual Situation: You work at an urgent care clinic located near a local lake. A 16-year-old minor patient visiting from out of state is brought to the clinic by a friend who indicates that they were water skiing and that the minor lacerated his leg during a fall.

Question Posed: Can you provide treatment for the minor patient without obtaining the prior consent of the minor's parents or guardian?

Recommendation: Physicians and other healthcare practitioners may render emergency medical care to any patient regardless of age when the patient is unable to give consent for any reason and there is no other person reasonably available who is legally authorized to consent on behalf of the minor.

In the non-emergency situation, the general rule is that a physician must obtain consent from a minor's parents or legal guardian before providing medical care and treatment. Therefore, the physician should make all reasonable efforts to obtain consent from the parent or legal guardian before providing any care. If the parents or legal guardian are unavailable and delay in treatment could harm the patient, the physician must answer the questions of whether a reasonable person would consent to the proposed treatment and what physicians in that specialty would ordinarily do under like circumstances. The physician should make notes in the patient's chart showing that the minor patient consented to the treatment and that reasonable steps were made to contact the parents or legal guardian before treatment.

ILLUSTRATION C:

Grandmother (or Stepparent) Brings Minor Patient for Check-Up

Factual Situation: You are a family medicine physician who sees pediatric patients in an office setting. A grandmother (or stepparent) schedules an appointment for her granddaughter (or daughter) for a routine check-up. Upon questioning, you learn that the minor has been living with the grandmother (or stepparent) for several months and that she is unsure of the parents' current whereabouts.

Questions Posed: Is the grandmother (or stepparent) authorized to consent for the minor patient's medical care? Can you perform the examination?

Recommendation: A "custodian" includes a stepparent or a relative within the fourth degree of consanguinity to a minor child who has assumed responsibility for that child. A custodian has the duty to provide ordinary medical care for that child and has the right to consent to emergency medical care with respect to a child, including surgery. A routine check-up would fall within ordinary medical care for the child. The circumstances, including who consented for the child's care, should be documented in the child's medical record.

ILLUSTRATION D:

Minor with a Sexually Transmitted Infection

Factual Situation: You are an obstetrician/gynecologist. A minor patient presents with her parent with complaints of painful monthly periods. Upon your examination of the patient, you determine that the minor patient suffers from endometriosis. You also determine that the patient suffers from genital herpes.

Questions Posed: What information needs to be given to the parent to obtain permission to treat the minor? Can the healthcare provider reveal the minor's complete medical condition to the parent?

Recommendation: The minor cannot be treated for the endometriosis without the informed consent of her parent. Therefore, the healthcare provider may inform the parent of the diagnosis of endometriosis and must obtain the parent's permission for treatment. The genital herpes, on the other hand, is a sexually transmitted infection (STI). The minor does not need the parent's consent for treatment of an STI and the healthcare provider should not disclose a diagnosis of an STI to the parent without the minor's consent. If a healthcare practitioner receives information confirming a child is infected with an STI, this may need to be reported to the department of human services if the practitioner reasonably believes the child has been abused. (See "Child Abuse and Reporting," on page 8.)

ILLUSTRATION E:

Minor with Parents' Insurance Card

Factual Situation: A minor presents to your office and requests that she be administered an injection of Depo-Provera for birth control purposes. She presents her parents' insurance information for payment.

Questions Posed: Can the physician provide the birth control to the minor without the parents' consent? Can the physician submit the claim to the parents' insurer?

Recommendation: A person may apply for contraceptive services directly to a licensed physician or a family planning clinic. A minor must give written consent to receive the services. The physician may also submit the claim for payment to the parents' insurer, provided that the minor is an insured patient under the plan. The minor should be counseled, however, that information regarding her treatment may be disclosed to third-party payors for the purpose of obtaining payment. The minor should also be counseled that the third-party payor may disclose information to the parents as the beneficiaries under the insurance plan.

COMMON SCENARIOS INVOLVING MINORS

ILLUSTRATION F:

Parents Away on Trip

Factual Situation: A minor patient enters your office with an adult. The adult advises you that she is a neighbor who is watching the minor while his parents are away on a trip. The neighbor presents you with a document that reads "Power of Attorney" and authorizes the neighbor to make decisions concerning the minor's medical care.

Question Posed: Can you proceed with treatment?

Recommendation: Parents may delegate their parental powers regarding the care of a minor to another by executing a general power of attorney. The power of attorney allows the neighbor, as the parent's agent, to perform all tasks necessary to provide the proper care for the minor, which includes the authority to make medical decisions, pay necessary healthcare expenses, and act as the minor's personal representative pursuant to HIPAA. The physician should make notes in the patient's chart showing that the neighbor consented as an agent under the power of attorney and include a copy of the signed power of attorney in the record. If there are any concerns about the power of attorney and the parent or guardian cannot be reached, and if a delay in treatment could harm the child, the physician should go through the same analysis as in Illustration A.

ILLUSTRATION G:

Minor with Substance-related Disorder

Factual Situation: A 15-year-old minor presents to your office in an impaired condition and communicates that he is addicted to heroin and wishes to receive treatment. The minor requests that his parents not be informed of his addiction or treatment.

Questions Posed: Can the healthcare provider initiate treatment? Must the parents be contacted?

Recommendation: A minor can request treatment for a substance-related disorder from a facility, a licensed physician, or a mental health professional without the knowledge or consent of their parents. The physician cannot provide treatment, however, to a person who is so impaired that they lack sufficient understanding or capacity to make or communicate responsible decisions. In this situation, the provider may initiate treatment as an emergency measure and confirm with the minor that he wishes to proceed with further treatment when he regains the capacity to make this decision.

ILLUSTRATION H:

Minor with a Baby

Factual Situation: A 15-year-old minor presents to your office with a baby. She indicates that she is the baby's mother and that the baby has been sick. The mother also indicates that she believes she has the flu and requests treatment.

Questions Posed: Can you treat the baby? Can you treat the mother?

Recommendation: Parents have a fundamental right to make decisions regarding the care, custody, and control of their children under the U.S. Constitution and Iowa law, therefore the minor can consent to the treatment of her baby without any further involvement from her own parents or legal guardian. Ironically, the minor cannot consent to her own care and treatment unless she is otherwise emancipated.

ILLUSTRATION I:

Divorced Parent

Factual Situation: A minor accompanied by his divorced father presents to your office for treatment of a persistent cough.

Question Posed: Can you provide care and treatment to the minor without the other parent's consent?

Recommendation: Healthcare providers are entitled to rely on the statements of the parent who presents his or her child for medical care. In the absence of knowledge that the father's authority has been taken away by court order, the healthcare provider should provide the care requested. Rights and responsibilities of joint legal custody include equal participation in decisions affecting the child's medical care. Unless otherwise ordered by the court in a custody decree, both parents have legal access to information concerning the child, including medical records.

ILLUSTRATION J:

Minor Is Sexually Active with an Adult

Factual Situation: A 14-year-old minor requests birth control pills. During her history, she relates that she is sexually involved with a 19-year-old man, but that she does not wish this information provided to her parents.

Questions Posed: Can you provide the birth control pills? Must the parents be notified of the sexual relationship?

Recommendation: A minor can make her own decisions regarding birth control without parental knowledge or consent, and birth control pills can be provided. In this case, the minor patient also described sexual abuse because she is 14 and her sexual partner is more than four years older. A healthcare practitioner should make a report of abuse to the department of human services. The reporting statute has no notice requirement to the parents by the healthcare practitioner.

ILLUSTRATION K:

Parent Demands a Minor Patient Be Tested for Sexually Transmitted Infections and for Drugs

Factual Situation: A 16-year-old minor accompanied by one of her parents presents to the office. The parent demands that the minor be tested for sexually transmitted infections (STIs) and a drug screening, suspecting the child has been "hanging around the wrong crowd" and may be sexually active. The minor adamantly opposes being tested.

Questions Posed: Can you test for STIs or illicit drugs without the minor's consent? Is the consent and demand of the parent enough? What if the parent secretly asks you to screen for STIs or drugs without the minor patient's knowledge or consent incidental to some other tests that you were running?

Recommendation: Because a minor has the legal capacity to give consent for medical services related to the prevention, diagnosis, or treatment of STIs without the consent of a parent or guardian, a minor generally cannot be tested for any STI without their knowledge and consent as the patient. The situation described does not fall within any of the narrow exceptions allowed under the law for testing without consent and the STI test cannot be performed, whether the parent demands it openly or secretly asks you to perform the test.

The drug testing is less clear from a legal standpoint. While a minor can consent to drug testing and treatment, the law does not specifically preclude the possibility that the parent could separately consent nor does the law specifically prohibit conducting a drug test without the patient's knowledge or consent. Copic advises against drug testing of minors without their knowledge or consent. This can erode the relationship of trust between the physician and patient. It is appropriate to understand the parents' concerns and proceed accordingly, which may include having a confidential discussion with the patient regarding substance abuse.

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