

Treating minors under Florida's new 'parental consent' law

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Prior to HB 241 being signed into law, the Florida Statutes did not contain a provision that specifically made it a crime to provide medical treatment to a minor child without parental consent. With the new parental consent law that went into effect on July 1, 2021, Florida law now specifically makes it a misdemeanor of the first degree for physicians and other health care providers to provide medical services to a minor without first obtaining written parental consent. **While HB 241 enumerates parental rights with respect to a minor child in multiple areas, the area of concern for physicians lies in Section 7 of the bill**, which provides that:

- (1) Except as otherwise provided by law, a health care practitioner, as defined in s. 456.0001, or an individual employed by such health care practitioner may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor child without first obtaining written parental consent.
- (2) Except as otherwise provided by law or a court order, a provider, as defined in s. 408.803, may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written parental consent.
- (3) This section does not apply to an abortion, which is governed by chapter 390.
- (4) This section does not apply to services provided by a clinical laboratory unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility.

Two provisions of this new law have generated the most concern. First, any physician who provides any type of medical treatment to a minor must first obtain the **written** consent of the minor's parents. Simply having a child's parents present during an office visit no longer satisfies the consent requirement. Any physician who treats a minor in any type of setting must obtain written consent to do so.

The written consent requirement is not limited to just providing health care services. Any physician who solicits or arranges to provide health care services or who prescribes medicinal drugs to a minor must first obtain written parental consent. What does it mean to "solicit" health care services? HB 241 provides no guidance. Black's Law Dictionary defines "solicit" as "1. To seek or to plead, to entreat and ask. 2. To lure or tempt a person." As it would be impractical to obtain written consent from every parent whose child might see an advertisement for health care services, in this context written consent is apparently required if a health care provider wishes to ask a specific minor if they would like to receive a particular health care service.

Also undefined is what it means to "arrange" to provide health care services. Arguably, this could include referring a patient to a specialist, participating in the transfer of a minor patient to a different health care facility, or requesting a consultation or second opinion from another



health care provider. Since the Department of Health was not granted rulemaking authority in the bill, physicians should not expect any clarification of these terms and will have to determine on their own whether a particular action with respect to a minor constitutes soliciting or arranging health care services.

Prescribing medicinal drugs, at least, is self-explanatory. What is not clear is whether a physician is required to get written consent for providing health care services and a separate consent for prescribing a medicinal drug during the treatment of the minor. The safest course of conduct is to get consent in writing for the examination and treatment, and a separate consent for any prescription written. Alternatively, it may be permissible to get one consent, in which the parent acknowledges in writing their consent to the provision of health care services as well as their consent to the prescribing of any medicinal drug the physician deems medically necessary. Given the wording of HB 241, it does not appear that consent for the provision of health care services alone will suffice if such services also include a prescription for medication.

Does the requirement that parental consent be in writing mean that the physician has to maintain paper records of such consent? HB 241 is silent on this issue. Presumably physicians will be able to maintain a record of parental consent electronically as part of the patient's electronic medical record. If a contrary interpretation emerges and paper records are required, the FMA will notify our members immediately.

The second major issue that physicians will have to deal with regarding the passage of HB 241 is exactly when parental consent is required to treat a minor. Proponents of this bill note that under the common law, minors generally cannot consent to their own medical treatment, and that Florida law contains a number of statutory exceptions to this common law rule. The proponents argue that HB 241 preserves these exceptions in section 1014.06(1) by the inclusion of the phrase "except as otherwise provided by law." There is general agreement among medical legal counsel that existing statutory exceptions to the parental consent requirement are maintained by this provision. There is less agreement about exactly which statutory exceptions are included and in which situations parental consent is not required.

The FMA General Counsel's Office, along with legal counsel for a number of other physician associations, maintain that "except as otherwise provided by law" exempts from the parental consent requirement only those statutes that specifically allow a physician to provide or a minor to receive health care services without parental consent. Statutory provisions that merely confer civil immunity from liability for providing a health care service, such as the Good Samaritan Actⁱ, or the volunteer team physician statuteⁱⁱ are not contrary to the parental consent requirement of Section 7 of HB 241 and thus do not qualify as an exception under the "except as otherwise provided by law" provision.

Presumably, the laws that qualify for the "except as otherwise provided by law" exception are federal and state laws, both constitutional, statutory and common. The FMA has identified the following state statutes as those that would allow a physician to treat a minor without first

obtaining written parental consent as required in HB 241 (the full text of each statute is included in the Appendix). Common law exceptions for parental consent, and any applicable federal laws, will be examined in a later article.

Section 743.064 – Emergency medical care or treatment to minors without parental consent.

This statute is cited by some of HB 241's proponents as the authority for physicians to provide emergency medical care to a minor without the burden of obtaining parental consent pursuant to HB 241. To a certain extent that is true — the statute clearly states that parental consent is not required for emergency medical care or treatment if the absence of such would endanger the health or physical well-being of the minor. This statute, however, does not exempt all emergency medical care from the parental consent requirement. Only care “administered in a hospital licensed by the state under chapter 395 or in a college health service,” or care “rendered in the prehospital setting by paramedics, emergency medical technicians, and other emergency medical services personnel” qualify for the exception. Emergency medical care provided to a minor by a physician outside of a hospital or college health service, such as at the scene of an automobile accident, is not included.

Section 743.015 – Disabilities of nonage; removal.

This statute allows a circuit court judge to remove the disabilities of nonage of a minor age 16 or older. If certain conditions are met, the judge can enter an order allowing the minor to perform all acts an individual 18 years of age could do, which would include consenting to medical treatment. Physicians, therefore, are not required to obtain parental consent prior to treating an “emancipated” minor. Prior to providing such treatment, however, physicians should make sure they obtain a certified copy of the removal of disabilities of nonage and maintain this document in the patient's medical records.

Section 743.01 – Removal of disabilities of married minors.

This statute allows any minor who is married, or who has been married, to perform all acts he or she could do if not a minor. This would include consent to medical examination and treatment. Thus, physicians do not need to obtain parental consent to treat married minors, male or female, under HB 241.

Section 743.06 – Removal of disabilities of minors; donation of blood without parental consent.

This statute specifically allows any minor who is at least 17 years old to give blood without parental consent, unless the parents specifically object, in writing, to the donation or penetration of the skin. Physicians are free to take a blood donation from a 17-year-old, absent written parental objection, without violating HB 241.



Section 743.0645 – Other persons who may consent to medical care or treatment of a minor.

This statute allows health care providers to provide “medical care and treatment” to a minor not in state custody, without the consent of a parent or guardian when, after a reasonable attempt, a person who has the power to consent as otherwise provide by law cannot be contacted and has not provided actual notice to the contrary.

“Medical care and treatment” in this context includes “ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures.”

Physicians wishing to provide medical care to a minor who cannot get in touch with the minor’s parents to obtain consent can obtain consent from any of the following in order of priority listed:

1. A health care surrogate or a person who possesses a power of attorney to provide medical consent.
2. A stepparent.
3. A grandparent of the minor.
4. An adult brother or sister of the minor.
5. An adult aunt or uncle of the minor.

For minors who are in state custody, consent for medical care and treatment may be given by a Department of Children and Families or Department of Juvenile Justice caseworker, juvenile probation officer, or person primarily responsible for the case management of the child, the administrator of any facility licensed by the department under s. 393.067, s. 394.875, or s. 409.175, or the administrator of any state-operated or state-contracted delinquency residential treatment facility.

743.065 – Unwed pregnant minor or minor mother; consent to medical services for minor or minor child’s valid.

This statute allows an unwed pregnant minor to consent to medical or surgical care or services relating to her pregnancy performed by a hospital or clinic (apparently from any licensed health care practitioner working within the scope of their license) or by an MD or DO. Note that this provision only allows the unwed pregnant minor to consent to services relating to her pregnancy – HB 241 requires written consent for any medical or surgical care not related to the pregnancy. The minor can consent to a cesarean section, but not to a tonsillectomy.

This statute further provides that an unwed minor mother may consent to the performance of medical care and services for her child. The minor can consent to a tonsillectomy for her child, but not for herself. No mention is made as to whether an unwed minor father can consent to treatment for his child.



743.066 – Removal of disability of minors adjudicated as adults.

This statute provides that a minor who has been adjudicated as an adult (presumably pursuant to s. 743.015) and is in the custody or under the supervision of the Department of Corrections can consent to their own medical care with the exception of abortion and sterilization services.

743.067 – Certified unaccompanied homeless youths.

This statute sets forth the qualifications for a minor who is 16 years of age or older to be designated as an “unaccompanied homeless youth.” Such a youth can apply and receive a certificate from the State Office on Homelessness. Certified youth can consent to “medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827.” Health care providers may accept this certificate as proof of the minor’s status as a certified unaccompanied homeless youth.

This status allows the certified youth to also consent to treatment for his or her minor child, if the youth is unmarried, is the parent of the child, and has actual custody. Note that this statute allows the unmarried father to provide consent – if he were not a certified homeless youth, he would not be specifically authorized to provide consent for his child.

381.0051 – Family planning.

This statute allows MDs and DOs and the Department of Health to provide “contraceptive information and services of a nonsurgical nature,” without parental consent, to any minor who either:

1. Is married
2. Is a parent
3. Is pregnant
4. May, in the opinion of the physician, suffer probable health hazards if such services are not provided

Thus, for minors who are not married, parents, pregnant, or likely to suffer health hazards if contraceptive services are not provided, HB 241 requires written parental consent before providing such services.

This issue of what constitutes “probable health hazards” is not defined. A physician relying on this exception should fully document in the minor’s medical records the health hazard that would likely result if contraceptive services are not provided.



383.50 – Treatment of surrendered newborn infant.

This statute provides that a newborn infant (approximately 7 days old or younger) left at a hospital, an emergency medical services station, or a fire station, can be admitted to a hospital and receive all necessary emergency services and care. The hospital and all of its licensed health care professionals have implied consent for treatment and are immune from criminal or civil liability for acting in good faith in accordance with this statute.

384.30 – Minors' consent to treatment.

This statute allows any minor to consent to an examination and treatment for a sexually transmissible disease from a physician, health care professional or facility qualified to provide such treatment. The statute specifically states that the “consent of the parents or guardians of a minor is not a prerequisite for an examination or treatment.”

This statute further provides that the consultation, examination and treatment are confidential and shall not be divulged in any direct or indirect manner. If you are going to charge a minor for such care, it is best to accept cash only and not bill the parent's insurance company.

390.01114 – Parental Notice of and Consent for Abortion Act.

This statute sets forth detailed rules regarding parental notification and consent for minors seeking an abortion. These rules are more detailed than for any other medical procedure, and a physician who chooses to provide abortion services for minors should be intimately familiar with the provisions of this statute.

394.4784 – Minors; access to outpatient crisis intervention services and treatment.

This statute provides that any minor 13 years or older who experiences an emotional crisis to such degree that he or she perceives the need for professional assistance may consent to outpatient diagnostic and evaluation services, and outpatient crisis intervention, therapy and counseling services. The statute provides restrictions on who can perform such services, the services that are included, and the number of services that can be provided before parental consent is required.

39.407 – Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

This statute authorizes the Department of Children and Families to have a medical screening performed on a child who has been removed from the home and maintained in an out-of-home placement. This screening is to be performed by a licensed health care professional to examine the child for injury, illness, communicable diseases, and to determine the need for immunization. The screening can be performed without court authorization and without consent from a parent



or legal guardian. Any treatment determined necessary through such screening is subject to pages of rules, exceptions and restrictions.

This statute also sets forth the process for providing psychotropic medications to a minor who has been removed from the home when parental consent cannot be obtained.

Physicians who provide care to minors who are in the custody of DCF should familiarize themselves with this statute.

397.601 – Voluntary admissions.

This statute removes the disability of nonage for minors under 18 years of age “solely for the purpose of obtaining voluntary substance abuse impairment services from a licensed service provider.” Parental consent for such services is not required.

The disability of nonage is NOT removed if there is an involuntary admission for substance abuse services and there is law enforcement activity in connection with protective custody. A physician involved in such a situation should obtain parental consent or seek court guidance.

APPENDIX

39.407 - Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

(1) When any child is removed from the home and maintained in an out-of-home placement, the department is authorized to have a medical screening performed on the child without authorization from the court and without consent from a parent or legal custodian. Such medical screening shall be performed by a licensed health care professional and shall be to examine the child for injury, illness, and communicable diseases and to determine the need for immunization. The department shall by rule establish the invasiveness of the medical procedures authorized to be performed under this subsection. In no case does this subsection authorize the department to consent to medical treatment for such children (2) When the department has performed the medical screening authorized by subsection (1), or when it is otherwise determined by a licensed health care professional that a child who is in an out-of-home placement, but who has not been committed to the department, is in need of medical treatment, including the need for immunization, consent for medical treatment shall be obtained in the following manner:



(a)1. Consent to medical treatment shall be obtained from a parent or legal custodian of the child; or

2. A court order for such treatment shall be obtained.

(b) If a parent or legal custodian of the child is unavailable and his or her whereabouts cannot be reasonably ascertained, and it is after normal working hours so that a court order cannot reasonably be obtained, an authorized agent of the department shall have the authority to consent to necessary medical treatment, including immunization, for the child. The authority of the department to consent to medical treatment in this circumstance shall be limited to the time reasonably necessary to obtain court authorization.

(c) If a parent or legal custodian of the child is available but refuses to consent to the necessary treatment, including immunization, a court order shall be required unless the situation meets the definition of an emergency in s. 743.064 or the treatment needed is related to suspected abuse, abandonment, or neglect of the child by a parent, caregiver, or legal custodian. In such case, the department shall have the authority to consent to necessary medical treatment. This authority is limited to the time reasonably necessary to obtain court authorization.

In no case shall the department consent to sterilization, abortion, or termination of life support.

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician or a psychiatric nurse, as defined in s. 394.455, shall attempt to obtain express and informed consent, as defined in s. 394.455(16) and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician or psychiatric nurse, as defined in s. 394.455. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician or psychiatric nurse, as defined in s. 394.455, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decision-making process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician or psychiatric nurse, as defined in s. 394.455, all pertinent medical information known to the department concerning that child.



(b)1. If a child who is removed from the home under s. 39.401 is receiving prescribed psychotropic medication at the time of removal and parental authorization to continue providing the medication cannot be obtained, the department may take possession of the remaining medication and may continue to provide the medication as prescribed until the shelter hearing, if it is determined that the medication is a current prescription for that child and the medication is in its original container.

2. If the department continues to provide the psychotropic medication to a child when parental authorization cannot be obtained, the department shall notify the parent or legal guardian as soon as possible that the medication is being provided to the child as provided in subparagraph 1. The child's official departmental record must include the reason parental authorization was not initially obtained and an explanation of why the medication is necessary for the child's well-being.

3. If the department is advised by a physician licensed under chapter 458 or chapter 459 or a psychiatric nurse, as defined in s. 394.455, that the child should continue the psychotropic medication and parental authorization has not been obtained, the department shall request court authorization at the shelter hearing to continue to provide the psychotropic medication and shall provide to the court any information in its possession in support of the request. Any authorization granted at the shelter hearing may extend only until the arraignment hearing on the petition for adjudication of dependency or 28 days following the date of removal, whichever occurs sooner.

4. Before filing the dependency petition, the department shall ensure that the child is evaluated by a physician licensed under chapter 458 or chapter 459 or a psychiatric nurse, as defined in s. 394.455, to determine whether it is appropriate to continue the psychotropic medication. If, as a result of the evaluation, the department seeks court authorization to continue the psychotropic medication, a motion for such continued authorization shall be filed at the same time as the dependency petition, within 21 days after the shelter hearing.

(c) Except as provided in paragraphs (b) and (e), the department must file a motion seeking the court's authorization to initially provide or continue to provide psychotropic medication to a child in its legal custody. The motion must be supported by a written report prepared by the department which describes the efforts made to enable the prescribing physician or psychiatric nurse, as defined in s. 394.455, to obtain express and informed consent for providing the medication to the child and other treatments considered or recommended for the child. In addition, the motion must be supported by the prescribing physician's or psychiatric nurse's signed medical report providing:

1. The name of the child, the name and range of the dosage of the psychotropic medication, and that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which such medication is being prescribed.

2. A statement indicating that the physician or psychiatric nurse, as defined in s. 394.455, has reviewed all medical information concerning the child which has been provided.



3. A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms the medication, at its prescribed dosage, is expected to address.

4. An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication; drug-interaction precautions; the possible effects of stopping the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child if age appropriate and to the child's caregiver.

5. Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the medication; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician or psychiatric nurse, as defined in s. 394.455, recommends.

(d)1. The department must notify all parties of the proposed action taken under paragraph (c) in writing or by whatever other method best ensures that all parties receive notification of the proposed action within 48 hours after the motion is filed. If any party objects to the department's motion, that party shall file the objection within 2 working days after being notified of the department's motion. If any party files an objection to the authorization of the proposed psychotropic medication, the court shall hold a hearing as soon as possible before authorizing the department to initially provide or to continue providing psychotropic medication to a child in the legal custody of the department. At such hearing and notwithstanding s. 90.803, the medical report described in paragraph (c) is admissible in evidence. The prescribing physician or psychiatric nurse, as defined in s. 394.455, does not need to attend the hearing or testify unless the court specifically orders such attendance or testimony, or a party subpoenas the physician or psychiatric nurse, as defined in s. 394.455, to attend the hearing or provide testimony. If, after considering any testimony received, the court finds that the department's motion and the physician's or the psychiatric nurse's medical report meet the requirements of this subsection and that it is in the child's best interests, the court may order that the department provide or continue to provide the psychotropic medication to the child without additional testimony or evidence. At any hearing held under this paragraph, the court shall further inquire of the department as to whether additional medical, mental health, behavioral, counseling, or other services are being provided to the child by the department which the prescribing physician or psychiatric nurse, as defined in s. 394.455, considers to be necessary or beneficial in treating the child's medical condition and which the physician or psychiatric nurse, as defined in s. 394.455, recommends or expects to provide to the child in concert with the medication. The court may order additional medical consultation, including consultation with the MedConsult line at the University of Florida, if available, or require the department to obtain a second opinion within a reasonable timeframe as established by the court, not to exceed 21 calendar days, after such order based upon consideration of the best interests of the child. The department must make a referral for an appointment for a second opinion with a physician or psychiatric nurse, as



defined in s. 394.455, within 1 working day. The court may not order the discontinuation of prescribed psychotropic medication if such order is contrary to the decision of the prescribing physician or psychiatric nurse, as defined in s. 394.455, unless the court first obtains an opinion from a licensed psychiatrist, if available, or, if not available, a physician licensed under chapter 458 or chapter 459, stating that more likely than not, discontinuing the medication would not cause significant harm to the child. If, however, the prescribing psychiatrist specializes in mental health care for children and adolescents, the court may not order the discontinuation of prescribed psychotropic medication unless the required opinion is also from a psychiatrist who specializes in mental health care for children and adolescents. The court may also order the discontinuation of prescribed psychotropic medication if a child's treating physician, licensed under chapter 458 or chapter 459, or psychiatric nurse, as defined in s. 394.455, states that continuing the prescribed psychotropic medication would cause significant harm to the child due to a diagnosed nonpsychiatric medical condition.

2. The burden of proof at any hearing held under this paragraph shall be by a preponderance of the evidence.

(e)1. If the child's prescribing physician or psychiatric nurse, as defined in s. 394.455, certifies in the signed medical report required in paragraph (c) that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child, the medication may be provided in advance of the issuance of a court order. In such event, the medical report must provide the specific reasons why the child may experience significant harm and the nature and the extent of the potential harm. The department must submit a motion seeking continuation of the medication and the physician's or psychiatric nurse's medical report to the court, the child's guardian ad litem, and all other parties within 3 working days after the department commences providing the medication to the child. The department shall seek the order at the next regularly scheduled court hearing required under this chapter, or within 30 days after the date of the prescription, whichever occurs sooner. If any party objects to the department's motion, the court shall hold a hearing within 7 days.

2. Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, the department must seek court authorization as described in paragraph (c).

(f)1. The department shall fully inform the court of the child's medical and behavioral status as part of the social services report prepared for each judicial review hearing held for a child for whom psychotropic medication has been prescribed or provided under this subsection. As a part of the information provided to the court, the department shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem, attorney, or attorney ad litem who has been appointed to represent the child or the child's interests, the court may review the status more frequently than required in this subsection.



2. The court may, in the best interests of the child, order the department to obtain a medical opinion addressing whether the continued use of the medication under the circumstances is safe and medically appropriate.

(g) The department shall adopt rules to ensure that children receive timely access to clinically appropriate psychotropic medications. These rules must include, but need not be limited to, the process for determining which adjunctive services are needed, the uniform process for facilitating the prescribing physician's or psychiatric nurse's ability to obtain the express and informed consent of a child's parent or guardian, the procedures for obtaining court authorization for the provision of a psychotropic medication, the frequency of medical monitoring and reporting on the status of the child to the court, how the child's parents will be involved in the treatment-planning process if their parental rights have not been terminated, and how caretakers are to be provided information contained in the physician's or psychiatric nurse's signed medical report. The rules must also include uniform forms to be used in requesting court authorization for the use of a psychotropic medication and provide for the integration of each child's treatment plan and case plan. The department must begin the formal rulemaking process within 90 days after the effective date of this act.

(4)(a) A judge may order a child in an out-of-home placement to be examined by a licensed health care professional.

(b) The judge may also order such child to be evaluated by a psychiatrist or a psychologist or, if a developmental disability is suspected or alleged, by the developmental disability diagnostic and evaluation team of the department. If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable.

(c) The judge may also order such child to be evaluated by a district school board educational needs assessment team. The educational needs assessment provided by the district school board educational needs assessment team shall include, but not be limited to, reports of intelligence and achievement tests, screening for learning disabilities and other handicaps, and screening for the need for alternative education as defined in s. 1001.42.

(5) A judge may order a child in an out-of-home placement to be treated by a licensed health care professional based on evidence that the child should receive treatment. The judge may also order such child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service provider. Except as provided in subsection (6), if it is necessary to place the child in a residential facility for such services, the procedures and criteria established in s. 394.467 shall be used. A child may be provided mental health services in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1). Nothing in this section confers jurisdiction on the court with regard to determining eligibility or ordering services under chapter 393.

(6) Children who are in the legal custody of the department may be placed by the department, without prior approval of the court, in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment only pursuant to



this section or may be placed by the court in accordance with an order of involuntary examination or involuntary placement entered pursuant to s. 394.463 or s. 394.467. All children placed in a residential treatment program under this subsection must have a guardian ad litem appointed.

(a) As used in this subsection, the term:

1. "Residential treatment" means placement for observation, diagnosis, or treatment of an emotional disturbance in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395.
2. "Least restrictive alternative" means the treatment and conditions of treatment that, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the child or adolescent or others from physical injury.
3. "Suitable for residential treatment" or "suitability" means a determination concerning a child or adolescent with an emotional disturbance as defined in s. 394.492(5) or a serious emotional disturbance as defined in s. 394.492(6) that each of the following criteria is met:
 - a. The child requires residential treatment.
 - b. The child is in need of a residential treatment program and is expected to benefit from mental health treatment.
 - c. An appropriate, less restrictive alternative to residential treatment is unavailable.

(b) Whenever the department believes that a child in its legal custody is emotionally disturbed and may need residential treatment, an examination and suitability assessment must be conducted by a qualified evaluator who is appointed by the Agency for Health Care Administration. This suitability assessment must be completed before the placement of the child in a residential treatment center for emotionally disturbed children and adolescents or a hospital. The qualified evaluator must be a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.

(c) Before a child is admitted under this subsection, the child shall be assessed for suitability for residential treatment by a qualified evaluator who has conducted a personal examination and assessment of the child and has made written findings that:

1. The child appears to have an emotional disturbance serious enough to require residential treatment and is reasonably likely to benefit from the treatment.
2. The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.
3. All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.



A copy of the written findings of the evaluation and suitability assessment must be provided to the department, to the guardian ad litem, and, if the child is a member of a Medicaid managed care plan, to the plan that is financially responsible for the child's care in residential treatment, all of whom must be provided with the opportunity to discuss the findings with the evaluator.

(d) Immediately upon placing a child in a residential treatment program under this section, the department must notify the guardian ad litem and the court having jurisdiction over the child and must provide the guardian ad litem and the court with a copy of the assessment by the qualified evaluator.

(e) Within 10 days after the admission of a child to a residential treatment program, the director of the residential treatment program or the director's designee must ensure that an individualized plan of treatment has been prepared by the program and has been explained to the child, to the department, and to the guardian ad litem, and submitted to the department. The child must be involved in the preparation of the plan to the maximum feasible extent consistent with his or her ability to understand and participate, and the guardian ad litem and the child's foster parents must be involved to the maximum extent consistent with the child's treatment needs. The plan must include a preliminary plan for residential treatment and aftercare upon completion of residential treatment. The plan must include specific behavioral and emotional goals against which the success of the residential treatment may be measured. A copy of the plan must be provided to the child, to the guardian ad litem, and to the department.

(f) Within 30 days after admission, the residential treatment program must review the appropriateness and suitability of the child's placement in the program. The residential treatment program must determine whether the child is receiving benefit toward the treatment goals and whether the child could be treated in a less restrictive treatment program. The residential treatment program shall prepare a written report of its findings and submit the report to the guardian ad litem and to the department. The department must submit the report to the court. The report must include a discharge plan for the child. The residential treatment program must continue to evaluate the child's treatment progress every 30 days thereafter and must include its findings in a written report submitted to the department. The department may not reimburse a facility until the facility has submitted every written report that is due.

(g)1. The department must submit, at the beginning of each month, to the court having jurisdiction over the child, a written report regarding the child's progress toward achieving the goals specified in the individualized plan of treatment.

2. The court must conduct a hearing to review the status of the child's residential treatment plan no later than 60 days after the child's admission to the residential treatment program. An independent review of the child's progress toward achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court before its 60-day review.



3. For any child in residential treatment at the time a judicial review is held pursuant to s. 39.701, the child's continued placement in residential treatment must be a subject of the judicial review.

4. If at any time the court determines that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet his or her needs.

(h) After the initial 60-day review, the court must conduct a review of the child's residential treatment plan every 90 days.

(i) The department must adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 60-day independent review by the qualified evaluators of the child's progress toward achieving the goals and objectives of the treatment plan which review must be submitted to the court. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under this section, and a reasonable, cost-efficient fee schedule for qualified evaluators.

(7) When a child is in an out-of-home placement, a licensed health care professional shall be immediately called if there are indications of physical injury or illness, or the child shall be taken to the nearest available hospital for emergency care.

(8) Except as otherwise provided herein, nothing in this section shall be deemed to eliminate the right of a parent, legal custodian, or the child to consent to examination or treatment for the child.

(9) Except as otherwise provided herein, nothing in this section shall be deemed to alter the provisions of s. 743.064.

(10) A court shall not be precluded from ordering services or treatment to be provided to the child by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a church or religious organization, when required by the child's health and when requested by the child.

(11) Nothing in this section shall be construed to authorize the permanent sterilization of the child unless such sterilization is the result of or incidental to medically necessary treatment to protect or preserve the life of the child.

(12) For the purpose of obtaining an evaluation or examination, or receiving treatment as authorized pursuant to this section, no child alleged to be or found to be dependent shall be placed in a detention home or other program used primarily for the care and custody of children alleged or found to have committed delinquent acts.

(13) The parents or legal custodian of a child in an out-of-home placement remain financially responsible for the cost of medical treatment provided to the child even if either one or both of the parents or if the legal custodian did not consent to the medical treatment. After a hearing, the court may order the parents or legal custodian, if found able to do so, to reimburse the department or other provider of medical services for treatment provided.



(14) Nothing in this section alters the authority of the department to consent to medical treatment for a dependent child when the child has been committed to the department and the department has become the legal custodian of the child.

(15) At any time after the filing of a shelter petition or petition for dependency, when the mental or physical condition, including the blood group, of a parent, caregiver, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, the court may order the person to submit to a physical or mental examination by a qualified professional. The order may be made only upon good cause shown and pursuant to notice and procedures as set forth by the Florida Rules of Juvenile Procedure.

(16) At any time after a shelter petition or petition for dependency is filed, the court may order a person who has custody or is requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The order may be made only upon good cause shown. This subsection does not authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

History.—s. 20, ch. 78-414; s. 14, ch. 80-290; s. 2, ch. 84-226; s. 8, ch. 84-311; s. 74, ch. 86-220; s. 2, ch. 87-238; s. 230, ch. 95-147; s. 11, ch. 95-228; s. 59, ch. 98-403; s. 24, ch. 99-193; s. 1, ch. 2000-265; s. 151, ch. 2000-349; s. 3, ch. 2002-219; s. 885, ch. 2002-387; s. 2, ch. 2005-65; s. 3, ch. 2006-97; s. 4, ch. 2006-227; ss. 3, 62, ch. 2016-241; s. 6, ch. 2019-142; s. 15, ch. 2020-39.

381.0051 - Family planning.

(1) SHORT TITLE.—This section shall be known as the “Comprehensive Family Planning Act.”

(2) ACCESS TO SERVICES; PROHIBITIONS.—Except as otherwise provided in this section, no medical agency or institution of this state or unit of local government shall interfere with the right of any patient or physician to use medically acceptable contraceptive procedures, supplies, or information or to restrict the physician-patient relationship.

(3) AUTHORITY AND POWERS.—

(a) The Department of Health shall implement a comprehensive family planning program which shall be designed to include, but not be limited to, the following:

1. Comprehensive family planning education and counseling programs.
2. Prescription for and provision of all medically recognized methods of contraception.
3. Medical evaluation, including cytological examination and other appropriate laboratory studies.
4. Treatment of physical complications other than pregnancy resulting from the use of contraceptive methods.
5. Provision of services at locations and times readily available to the population served.
6. Emphasis and stress on service to postpartum mothers.



(b) Services shall be available to all persons desirous of such services, subject to the provisions of this section, at a cost based on a fee schedule prepared and published by the Department of Health. Fees shall be based on the cost of service and ability to pay.

(4) MINORS; PROVISION OF MATERNAL HEALTH AND CONTRACEPTIVE INFORMATION AND SERVICES.—

(a) Maternal health and contraceptive information and services of a nonsurgical nature may be rendered to any minor by persons licensed to practice medicine under the provisions of chapter 458 or chapter 459, as well as by the Department of Health through its family planning program, provided the minor:

1. Is married;
2. Is a parent;
3. Is pregnant;
4. Has the consent of a parent or legal guardian; or
5. May, in the opinion of the physician, suffer probable health hazards if such services are not provided.

(b) Application of nonpermanent internal contraceptive devices shall not be deemed a surgical procedure.

(5) REFUSAL FOR RELIGIOUS OR MEDICAL REASONS.—The provisions of this section shall not be interpreted so as to prevent a physician or other person from refusing to furnish any contraceptive or family planning service, supplies, or information for medical or religious reasons; and the physician or other person shall not be held liable for such refusal.

(6) RULES.—The Department of Health may adopt rules to implement this section, including rules regarding definitions of terms and requirements for eligibility, informed-consent services, revisits, temporary contraceptive methods, voluntary sterilization, and infertility services.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 72-132; s. 19, ch. 91-297; s. 37, ch. 97-101; s. 9, ch. 99-397; s. 5, ch. 2000-242; s. 23, ch. 2012-184.

Note.—Former s. 381.382.

383.50 - Treatment of surrendered newborn infant.

(1) As used in this section, the term “newborn infant” means a child who a licensed physician reasonably believes is approximately 7 days old or younger at the time the child is left at a hospital, emergency medical services station, or fire station.

(2) There is a presumption that the parent who leaves the newborn infant in accordance with this section intended to leave the newborn infant and consented to termination of parental rights.

(3) Each emergency medical services station or fire station staffed with full-time firefighters, emergency medical technicians, or paramedics shall accept any newborn infant left with a



firefighter, emergency medical technician, or paramedic. The firefighter, emergency medical technician, or paramedic shall consider these actions as implied consent to and shall:

- (a) Provide emergency medical services to the newborn infant to the extent he or she is trained to provide those services, and
- (b) Arrange for the immediate transportation of the newborn infant to the nearest hospital having emergency services.

A licensee as defined in s. 401.23, a fire department, or an employee or agent of a licensee or fire department may treat and transport a newborn infant pursuant to this section. If a newborn infant is placed in the physical custody of an employee or agent of a licensee or fire department, such placement shall be considered implied consent for treatment and transport. A licensee, a fire department, or an employee or agent of a licensee or fire department is immune from criminal or civil liability for acting in good faith pursuant to this section. Nothing in this subsection limits liability for negligence.

(4) Each hospital of this state subject to s. 395.1041 shall, and any other hospital may, admit and provide all necessary emergency services and care, as defined in s. 395.002(9), to any newborn infant left with the hospital in accordance with this section. The hospital or any of its licensed health care professionals shall consider these actions as implied consent for treatment, and a hospital accepting physical custody of a newborn infant has implied consent to perform all necessary emergency services and care. The hospital or any of its licensed health care professionals is immune from criminal or civil liability for acting in good faith in accordance with this section. Nothing in this subsection limits liability for negligence.

(5) Except when there is actual or suspected child abuse or neglect, any parent who leaves a newborn infant with a firefighter, emergency medical technician, or paramedic at a fire station or emergency medical services station, or brings a newborn infant to an emergency room of a hospital and expresses an intent to leave the newborn infant and not return, has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed unless the parent seeks to reclaim the newborn infant. When an infant is born in a hospital and the mother expresses intent to leave the infant and not return, upon the mother's request, the hospital or registrar shall complete the infant's birth certificate without naming the mother thereon.

(6) A parent of a newborn infant left at a hospital, emergency medical services station, or fire station under this section may claim his or her newborn infant up until the court enters a judgment terminating his or her parental rights. A claim to the newborn infant must be made to the entity having physical or legal custody of the newborn infant or to the circuit court before whom proceedings involving the newborn infant are pending.

(7) Upon admitting a newborn infant under this section, the hospital shall immediately contact a local licensed child-placing agency or alternatively contact the statewide central abuse hotline for the name of a licensed child-placing agency for purposes of transferring physical custody of



the newborn infant. The hospital shall notify the licensed child-placing agency that a newborn infant has been left with the hospital and approximately when the licensed child-placing agency can take physical custody of the child. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting a licensed child-placing agency.

(8) Any newborn infant admitted to a hospital in accordance with this section is presumed eligible for coverage under Medicaid, subject to federal rules.

(9) A newborn infant left at a hospital, emergency medical services station, or fire station in accordance with this section shall not be deemed abandoned and subject to reporting and investigation requirements under s. 39.201 unless there is actual or suspected child abuse or until the department takes physical custody of the child.

(10) A criminal investigation shall not be initiated solely because a newborn infant is left at a hospital under this section unless there is actual or suspected child abuse or neglect.

History.—s. 1, ch. 2000-188; s. 15, ch. 2001-53; s. 23, ch. 2001-62; s. 13, ch. 2007-230; s. 4, ch. 2008-90.

384.30 - Minors' consent to treatment.

(1) The department and its authorized representatives, each physician licensed to practice medicine under the provisions of chapter 458 or chapter 459, each health care professional licensed under the provisions of part I of chapter 464 who is acting pursuant to the scope of his or her license, and each public or private hospital, clinic, or other health facility may examine and provide treatment for sexually transmissible diseases to any minor, if the physician, health care professional, or facility is qualified to provide such treatment. The consent of the parents or guardians of a minor is not a prerequisite for an examination or treatment.

(2) The fact of consultation, examination, and treatment of a minor for a sexually transmissible disease is confidential and exempt from the provisions of s. 119.07(1) and shall not be divulged in any direct or indirect manner, such as sending a bill for services rendered to a parent or guardian, except as provided in s. 384.29.

History.—s. 90, ch. 86-220; s. 8, ch. 90-344; s. 12, ch. 93-227; s. 682, ch. 95-148; s. 200, ch. 96-406; s. 90, ch. 2000-318.

390.01114 - Parental Notice of and Consent for Abortion Act.

(1) SHORT TITLE.—This section may be cited as the “Parental Notice of and Consent for Abortion Act.”

(2) DEFINITIONS.—As used in this section, the term:



(a) “Actual notice” means notice that is given directly, in person or by telephone, to a parent or legal guardian of a minor, by a physician, at least 48 hours before the inducement or performance of a termination of pregnancy, and documented in the minor’s files.

(b) “Child abuse” means abandonment, abuse, harm, mental injury, neglect, physical injury, or sexual abuse of a child as those terms are defined in ss. 39.01, 827.04, and 984.03.

(c) “Constructive notice” means notice that is given in writing, signed by the physician, and mailed at least 72 hours before the inducement or performance of the termination of pregnancy, to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian. After the 72 hours have passed, delivery is deemed to have occurred.

(d) “Medical emergency” means a condition that, on the basis of a physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

(e) “Sexual abuse” has the meaning ascribed in s. 39.01.

(f) “Minor” means a person under the age of 18 years.

(3) **TERMINATION OF THE PREGNANCY OF A MINOR.**—A physician may not perform or induce the termination of a pregnancy of a minor unless the physician has complied with the notice and consent requirements of this section.

(4) **NOTIFICATION REQUIRED.**—

(a) Actual notice shall be provided by the physician performing or inducing the termination of pregnancy before the performance or inducement of the termination of the pregnancy of a minor. The notice may be given by a referring physician. The physician who performs or induces the termination of pregnancy must receive the written statement of the referring physician certifying that the referring physician has given notice. If actual notice is not possible after a reasonable effort has been made, the physician performing or inducing the termination of pregnancy or the referring physician must give constructive notice. Notice given under this subsection by the physician performing or inducing the termination of pregnancy must include the name and address of the facility providing the termination of pregnancy and the name of the physician providing notice. Notice given under this subsection by a referring physician must include the name and address of the facility where he or she is referring the minor and the name of the physician providing notice. If actual notice is provided by telephone, the physician must actually speak with the parent or guardian, and must record in the minor’s medical file the name of the parent or guardian provided notice, the phone number dialed, and the date and time of the call. If constructive notice is given, the physician must document that notice by placing copies of any document related to the constructive notice, including, but not limited to, a copy of the letter and the return receipt, in the minor’s medical file. Actual notice given by telephone shall be confirmed in writing, signed by the physician, and mailed to the last known address of



the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian.

(b) Notice is not required if:

1. In the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements. If a medical emergency exists, the physician shall make reasonable attempts, whenever possible, without endangering the minor, to contact the parent or legal guardian, and may proceed, but must document reasons for the medical necessity in the patient's medical records. The physician shall provide notice directly, in person or by telephone, to the parent or legal guardian, including details of the medical emergency and any additional risks to the minor. If the parent or legal guardian has not been notified within 24 hours after the termination of the pregnancy, the physician shall provide notice in writing, including details of the medical emergency and any additional risks to the minor, signed by the physician, to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian;
2. Notice is waived in writing by the person who is entitled to notice and such waiver is notarized, dated not more than 30 days before the termination of pregnancy, and contains a specific waiver of the right of the parent or legal guardian to notice of the minor's termination of pregnancy;
3. Notice is waived by the minor who is or has been married or has had the disability of nonage removed under s. 743.015 or a similar statute of another state;
4. Notice is waived by the patient because the patient has a minor child dependent on her; or
5. Notice is waived under subsection (6).

(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015.

(5) PARENTAL CONSENT REQUIRED.—

(a) A physician must obtain written consent from a parent or legal guardian before performing or inducing the termination of a pregnancy of a minor.

1. The consenting parent or legal guardian shall provide to the physician a copy of a government-issued proof of identification. The parent or legal guardian shall certify in a signed, dated, and notarized document, initialed on each page, that he or she consents to the termination of the pregnancy of the minor. The document must include the following statement, which must precede the signature of the parent or guardian: "I, (insert name of parent or legal guardian), am the (select "parent" or "legal guardian," as appropriate) of (insert name of minor) and give consent for (insert name of physician) to perform or induce a termination of pregnancy on her. Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true." A copy of the parent's or legal guardian's government-issued proof of identification must be attached to the notarized document.



2. The physician shall keep a copy of the proof of identification of the parent or legal guardian and the certified statement in the medical file of the minor for 5 years after the minor reaches the age of 18 years, but in no event less than 7 years.

3. A physician receiving consent from a parent or guardian under this section shall execute for inclusion in the medical record of the minor an affidavit stating: "I, (insert name of physician), certify that, according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the minor and her parent or legal guardian as sufficient evidence of identity."

(b) The consent of a parent or guardian is not required if:

1. Notification is not required as provided in subparagraph (4)(b)1., subparagraph (4)(b)3., subparagraph (4)(b)4., or subparagraph (4)(b)5.;

2. Notification is not required due to the existence of a waiver as provided in subparagraph (4)(b)2., if that waiver is signed by the minor's parent or legal guardian, is notarized, is dated within 30 days before the termination of the pregnancy, contains a specific waiver of the right of the parent or legal guardian to consent to the minor's termination of pregnancy, and a copy of the parent's or legal guardian's government-issued proof of identification is attached to the waiver;

3. Consent is waived under subsection (6); or

4. In the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the consent requirement. If a medical emergency exists, the physician must make reasonable attempts, whenever possible, and without endangering the minor, to contact the parent or legal guardian of the minor, and may proceed, but must document reasons for the medical necessity in the minor patient's medical records. The physician shall inform the parent or legal guardian, in person or by telephone, within 24 hours after the termination of the pregnancy of the minor, including details of the medical emergency that necessitated the termination of the pregnancy without the parent's or legal guardian's consent. The physician shall also provide this information in writing to the parent or legal guardian at his or her last known address, by first-class mail or by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian.

(c)1. A physician who intentionally or recklessly performs or induces, or attempts to perform or induce, a termination of a pregnancy of a minor without obtaining the required consent pursuant to this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A penalty may not be assessed against the minor upon whom a termination of pregnancy is performed or induced or upon whom a termination of pregnancy is attempted to be performed or induced.

2. It is a defense to prosecution that a minor misrepresented her age or identity to a physician by displaying a driver license or identification card issued by the state or another state which indicated that the minor was 18 years of age or older and that the appearance of the minor was such that a reasonably prudent person would believe that the minor was not under 18 years of age. To use the defense, a physician must provide a copy of the driver license or identification



card used by the minor. The defense does not apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or to have failed to use due diligence in determining the minor's age or identity.

(6) PROCEDURE FOR JUDICIAL WAIVER.—

(a) A minor may petition any circuit court in which the minor resides for a waiver of the requirements of this section and may participate in proceedings on her own behalf. The petition may be filed under a pseudonym or through the use of initials, as provided by court rule. The petition must include a statement that the petitioner is pregnant and that the requirements of this section have not been waived. The court shall advise the minor that she has a right to court-appointed counsel at no cost to the minor. The court shall, upon request, provide counsel for the minor at least 24 hours before the court proceeding.

(b)1. Court proceedings under this section must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule, and issue written findings of fact and conclusions of law, within 3 business days after the petition is filed, except that the 3-business-day limitation may be extended at the request of the minor. If the court fails to rule within the 3-business-day period and an extension has not been requested, the minor may immediately petition for a hearing upon the expiration of the 3-business-day period to the chief judge of the circuit, who must ensure a hearing is held within 48 hours after receipt of the minor's petition and an order is entered within 24 hours after the hearing.

2. If the circuit court does not grant judicial waiver of the requirements of this section, the minor has the right to appeal. An appellate court must rule within 7 days after receipt of appeal, but a ruling may be remanded with further instruction for a ruling within 3 business days after the remand. The reason for overturning a ruling on appeal must be based on abuse of discretion by the court and may not be based on the weight of the evidence presented to the circuit court since the proceeding is a nonadversarial proceeding.

(c) If the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy. If the court does not make the finding specified in this paragraph or paragraph (d), it must dismiss the petition.

Factors the court shall consider include:

1. The minor's:

- a. Age.
- b. Overall intelligence.
- c. Emotional development and stability.
- d. Credibility and demeanor as a witness.
- e. Ability to accept responsibility.
- f. Ability to assess both the immediate and long-range consequences of the minor's choices.
- g. Ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision.



2. Whether there may be any undue influence by another on the minor's decision to have an abortion.

(d) If the court finds, by a preponderance of the evidence, that the petitioner is the victim of child abuse or sexual abuse inflicted by one or both of her parents or her guardian, or by clear and convincing evidence that the requirements of this section are not in the best interest of the petitioner, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy. The best-interest standard does not include financial best interest or financial considerations or the potential financial impact on the minor or the minor's family if the minor does not terminate the pregnancy. If the court finds evidence of child abuse or sexual abuse of the minor petitioner by any person, the court shall report the evidence of child abuse or sexual abuse of the petitioner, as provided in s. 39.201. If the court does not make the finding specified in this paragraph or paragraph (c), it must dismiss the petition.

(e) A court that conducts proceedings under this section shall:

1. Provide for a written transcript of all testimony and proceedings;
2. Issue a final written order containing factual findings and legal conclusions supporting its decision, including factual findings and legal conclusions relating to the maturity of the minor as provided under paragraph (c); and
3. Order that a confidential record be maintained, as required under s. 390.01116.

(f) All hearings under this section, including appeals, shall remain confidential and closed to the public, as provided by court rule. Subject to a judge's availability as required under s. 26.20, hearings held under this section must be held in chambers or in a similarly private and informal setting within the courthouse.

(g) An expedited appeal shall be made available, as the Supreme Court provides by rule, to any minor to whom the circuit court denies a waiver of the requirements of this section. An order authorizing a termination of pregnancy under this subsection is not subject to appeal.

(h) Filing fees or court costs may not be required of any pregnant minor who petitions a court for a waiver of the requirements of this section at either the trial or the appellate level.

(i) A county is not obligated to pay the salaries, costs, or expenses of any counsel appointed by the court under this subsection.

(7) PROCEEDINGS.—The Supreme Court is requested to adopt rules and forms for petitions to ensure that proceedings under subsection (6) are handled expeditiously and in a manner consistent with this act. The Supreme Court is also requested to adopt rules to ensure that the hearings protect the minor's confidentiality and the confidentiality of the proceedings.

(8) REPORT.—The Supreme Court, through the Office of the State Courts Administrator, shall report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed under subsection (6) for the preceding year, and the timing and manner of disposal of such petitions by each circuit court. For each petition resulting in a waiver of the requirements of this section, the reason for the waiver shall be included in the report.



History.—s. 2, ch. 2005-52; s. 43, ch. 2006-1; s. 47, ch. 2011-213; s. 1, ch. 2011-227; s. 2, ch. 2020-147.

394.4784 - Minors; access to outpatient crisis intervention services and treatment.

For the purposes of this section, the disability of nonage is removed for any minor age 13 years or older to access services under the following circumstances:

(1) **OUTPATIENT DIAGNOSTIC AND EVALUATION SERVICES.**—When any minor age 13 years or older experiences an emotional crisis to such degree that he or she perceives the need for professional assistance, he or she shall have the right to request, consent to, and receive mental health diagnostic and evaluative services provided by a licensed mental health professional, as defined by Florida Statutes, or in a mental health facility licensed by the state. The purpose of such services shall be to determine the severity of the problem and the potential for harm to the person or others if further professional services are not provided. Outpatient diagnostic and evaluative services shall not include medication and other somatic methods, aversive stimuli, or substantial deprivation. Such services shall not exceed two visits during any 1-week period in response to a crisis situation before parental consent is required for further services, and may include parental participation when determined to be appropriate by the mental health professional or facility.

(2) **OUTPATIENT CRISIS INTERVENTION, THERAPY AND COUNSELING SERVICES.**—When any minor age 13 years or older experiences an emotional crisis to such degree that he or she perceives the need for professional assistance, he or she shall have the right to request, consent to, and receive outpatient crisis intervention services including individual psychotherapy, group therapy, counseling, or other forms of verbal therapy provided by a licensed mental health professional, as defined by Florida Statutes, or in a mental health facility licensed by the state. Such services shall not include medication and other somatic treatments, aversive stimuli, or substantial deprivation. Such services shall not exceed two visits during any 1-week period in response to a crisis situation before parental consent is required for further services, and may include parental participation when determined to be appropriate by the mental health professional or facility.

(3) **LIABILITY FOR PAYMENT.**—The parent, parents, or legal guardian of a minor shall not be liable for payment for any such outpatient diagnostic and evaluation services or outpatient therapy and counseling services, as provided in this section, unless such parent, parents, or legal guardian participates in the outpatient diagnostic and evaluation services or outpatient therapy and counseling services and then only for the services rendered with such participation.

(4) **PROVISION OF SERVICES.**—No licensed mental health professional shall be obligated to provide services to minors accorded the right to receive services under this section. Provision of such services shall be on a voluntary basis.



History.—s. 2, ch. 91-170; s. 716, ch. 95-148.

397.601 - Voluntary admissions.

(1) A person who wishes to enter treatment for substance abuse may apply to a service provider for voluntary admission.

(2) Within the financial and space capabilities of the service provider, a person must be admitted to treatment when sufficient evidence exists that the person is impaired by substance abuse and the medical and behavioral conditions of the person are not beyond the safe management capabilities of the service provider.

(3) The service provider must emphasize admission to the service component that represents the least restrictive setting that is appropriate to the person's treatment needs.

(4)(a) The disability of minority for persons under 18 years of age is removed solely for the purpose of obtaining voluntary substance abuse impairment services from a licensed service provider, and consent to such services by a minor has the same force and effect as if executed by an individual who has reached the age of majority. Such consent is not subject to later disaffirmance based on minority.

(b) Except for purposes of law enforcement activities in connection with protective custody, the disability of minority is not removed if there is an involuntary admission for substance abuse services, in which case parental participation may be required as the court finds appropriate.

History.—s. 5, ch. 93-39; s. 27, ch. 2009-132.

743.01 - Removal of disabilities of married minors.

The disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed, is removed. The minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could do if not a minor.

History.—ss. 1, 2, ch. 7364, 1917; RGS 3962, 3963; s. 1, ch. 9286, 1923; CGL 5881, 5882, 5883; s. 1, ch. 22750, 1945; s. 1, ch. 71-147; s. 1, ch. 73-300; s. 1063, ch. 97-102.

743.015 - Disabilities of nonage; removal.

(1) A circuit court has jurisdiction to remove the disabilities of nonage of a minor age 16 or older residing in this state upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem.

(2) The petition shall contain the following information:

(a) The name, address, residence, and date of birth of the minor.



- (b) The name, address, and current location of each of the minor's parents, if known.
- (c) The name, date of birth, custody, and location of any children born to the minor.
- (d) A statement of the minor's character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met.
- (e) Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding.
- (f) A statement of the reason why the court should remove the disabilities of nonage.
- (3) If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage. The attorney ad litem shall represent the child in all related proceedings.
- (4) If the petition is filed by the guardian ad litem or next friend, service of process must be perfected on the natural parents.
- (5) If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the nonpetitioning parent. Constructive service of process may be used, provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the nonpetitioning parent.
- (6) The court shall consider the petition and receive such evidence as it deems necessary to rule on the petition. If the court determines that removal of the disabilities of nonage is in the minor's best interest, it shall enter an order to that effect. An order removing the disabilities of nonage shall have the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and shall authorize the minor thereafter to exercise all of the rights and responsibilities of persons who are 18 years of age or older.
- (7) The court shall consider the petition and, if satisfied that the removal of the disabilities is in the minor's best interest, shall remove the disabilities of nonage; and shall authorize the minor to perform all acts that the minor could do if he or she were 18 years of age.
- (8) The judgment shall be recorded in the county in which the minor resides, and a certified copy shall be received as evidence of the removal of disabilities of nonage for all matters in all courts.

History.—s. 25, ch. 92-287; s. 5, ch. 93-230; s. 1064, ch. 97-102.

Note.—Former s. 39.016.

743.06 - Removal of disabilities of minors; donation of blood without parental consent.

Any minor who has reached the age of 17 years may give consent to the donation, without compensation therefor, of her or his blood and to the penetration of tissue which is necessary to accomplish such donation. Such consent shall not be subject to disaffirmance because of



minority, unless the parent or parents of such minor specifically object, in writing, to the donation or penetration of the skin.

743.064 - Emergency medical care or treatment to minors without parental consent.

(1) The absence of parental consent notwithstanding, a physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459 may render emergency medical care or treatment to any minor who has been injured in an accident or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation or provision of emergency medical care or treatment would endanger the health or physical well-being of the minor, and provided such emergency medical care or treatment is administered in a hospital licensed by the state under chapter 395 or in a college health service. Emergency medical care or treatment may also be rendered in the prehospital setting by paramedics, emergency medical technicians, and other emergency medical services personnel, provided such care is rendered consistent with the provisions of chapter 401. These persons shall follow the general guidelines and notification provisions of this section.

(2) This section shall apply only when parental consent cannot be immediately obtained for one of the following reasons:

(a) The minor's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the minor to the hospital.

(b) The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

(3) Notification shall be accomplished as soon as possible after the emergency medical care or treatment is administered. The hospital records shall reflect the reason such consent was not initially obtained and shall contain a statement by the attending physician that immediate emergency medical care or treatment was necessary for the patient's health or physical well-being. The hospital records shall be open for inspection by the person legally responsible for the minor.

(4) No person as delineated in subsection (1), hospital, or college health service shall incur civil liability by reason of having rendered emergency medical care or treatment pursuant to this section, provided such treatment or care was rendered in accordance with acceptable standards of medical practice.

743.0645 - Other persons who may consent to medical care or treatment of a minor.

(1) As used in this section, the term:

(a) "Blood testing" includes Early Periodic Screening, Diagnosis, and Treatment (EPSDT) testing and other blood testing deemed necessary by documented history or symptomatology



but excludes HIV testing and controlled substance testing or any other testing for which separate court order or informed consent as provided by law is required.

(b) “Medical care and treatment” includes ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order, health care surrogate designation under s. 765.2035 executed after September 30, 2015, power of attorney executed after July 1, 2001, or informed consent as provided by law is required, except as provided in s. 39.407(3).

(c) “Person who has the power to consent as otherwise provided by law” includes a natural or adoptive parent, legal custodian, or legal guardian.

(2) Any of the following persons, in order of priority listed, may consent to the medical care or treatment of a minor who is not committed to the Department of Children and Families or the Department of Juvenile Justice or in their custody under chapter 39, chapter 984, or chapter 985 when, after a reasonable attempt, a person who has the power to consent as otherwise provided by law cannot be contacted by the treatment provider and actual notice to the contrary has not been given to the provider by that person:

(a) A health care surrogate designated under s. 765.2035 after September 30, 2015, or a person who possesses a power of attorney to provide medical consent for the minor. A health care surrogate designation under s. 765.2035 executed after September 30, 2015, and a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual executing the health care surrogate for a minor or power of attorney.

(b) The stepparent.

(c) The grandparent of the minor.

(d) An adult brother or sister of the minor.

(e) An adult aunt or uncle of the minor.

There shall be maintained in the treatment provider’s records of the minor documentation that a reasonable attempt was made to contact the person who has the power to consent.

(3) The Department of Children and Families or the Department of Juvenile Justice caseworker, juvenile probation officer, or person primarily responsible for the case management of the child, the administrator of any facility licensed by the department under s. 393.067, s. 394.875, or s. 409.175, or the administrator of any state-operated or state-contracted delinquency residential treatment facility may consent to the medical care or treatment of any minor committed to it or in its custody under chapter 39, chapter 984, or chapter 985, when the person who has the power to consent as otherwise provided by law cannot be contacted and such person has not expressly objected to such consent. There shall be maintained in the records of the minor



documentation that a reasonable attempt was made to contact the person who has the power to consent as otherwise provided by law.

(4) The medical provider shall notify the parent or other person who has the power to consent as otherwise provided by law as soon as possible after the medical care or treatment is administered pursuant to consent given under this section. The medical records shall reflect the reason consent as otherwise provided by law was not initially obtained and shall be open for inspection by the parent or other person who has the power to consent as otherwise provided by law.

(5) The person who gives consent; a physician, dentist, nurse, or other health care professional licensed to practice in this state; or a hospital or medical facility, including, but not limited to, county health departments, shall not incur civil liability by reason of the giving of consent, examination, or rendering of treatment, provided that such consent, examination, or treatment was given or rendered as a reasonable prudent person or similar health care professional would give or render it under the same or similar circumstances.

(6) The Department of Children and Families and the Department of Juvenile Justice may adopt rules to implement this section.

(7) This section does not affect other statutory provisions of this state that relate to medical consent for minors.

History.—s. 2, ch. 90-42; s. 10, ch. 93-230; s. 155, ch. 97-101; s. 47, ch. 98-280; s. 82, ch. 99-3; s. 23, ch. 2001-53; s. 4, ch. 2005-65; s. 290, ch. 2014-19; s. 1, ch. 2015-153.

743.065 - Unwed pregnant minor or minor mother; consent to medical services for minor or minor's child valid.

(1) An unwed pregnant minor may consent to the performance of medical or surgical care or services relating to her pregnancy by a hospital or clinic or by a physician licensed under chapter 458 or chapter 459, and such consent is valid and binding as if she had achieved her majority.

(2) An unwed minor mother may consent to the performance of medical or surgical care or services for her child by a hospital or clinic or by a physician licensed under chapter 458 or chapter 459, and such consent is valid and binding as if she had achieved her majority.

(3) Nothing in this section shall affect the provisions of chapter 390.

History.—s. 1, ch. 79-302; s. 83, ch. 99-3; s. 4, ch. 2020-147.

743.066 - Removal of disability of minors adjudicated as adults.



The disability of nonage of a minor adjudicated as an adult and in the custody or under the supervision of the Department of Corrections is removed, as such disability relates to health care services, except in regard to medical services relating to abortion and sterilization.

History.—s. 1, ch. 81-90.

743.067 - Certified unaccompanied homeless youths.

(1) For purposes of this section, an “unaccompanied homeless youth” is an individual who is 16 years of age or older and is:

(a) Found by a school district’s liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435; or

(b) Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:

1. The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director’s designee;

2. The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director’s designee; or

3. A continuum of care lead agency, or its designee.

(2)(a) The State Office on Homelessness within the Department of Children and Families shall develop a standardized form that must be used by the entities specified in subsection (1) to certify qualifying unaccompanied homeless youth. The front of the form must include the circumstances that qualify the youth; the date the youth was certified; and the name, title, and signature of the certifying individual. This section must be reproduced in its entirety on the back of the form.

(b) A certified unaccompanied homeless youth may use the completed form to apply at no charge for an identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to s. 322.051(9).

(c) A health care provider may accept the written certificate as proof of the minor’s status as a certified unaccompanied homeless youth and may keep a copy of the certificate in the youth’s medical file.

(3) A certified unaccompanied homeless youth may:

(a) Petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.



(b) Notwithstanding s. 394.4625(1), consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for:

1. Himself or herself; or
2. His or her child, if the certified unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child.

(4) This section does not affect the requirements of s. 390.01114.

History.—s. 4, ch. 2012-186; s. 1, ch. 2014-173; s. 36, ch. 2017-151.

766.103 - Florida Medical Consent Law.

(1) This section shall be known and cited as the “Florida Medical Consent Law.”

(2) In any medical treatment activity not covered by s. 768.13, entitled the “Good Samaritan Act,” this act shall govern.

(3) No recovery shall be allowed in any court in this state against any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, podiatric physician licensed under chapter 461, dentist licensed under chapter 466, advanced practice registered nurse licensed under s. 464.012, or physician assistant licensed under s. 458.347 or s. 459.022 in an action brought for treating, examining, or operating on a patient without his or her informed consent when:

(a)1. The action of the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse, or physician assistant in obtaining the consent of the patient or another person authorized to give consent for the patient was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community as that of the person treating, examining, or operating on the patient for whom the consent is obtained; and

2. A reasonable individual, from the information provided by the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse, or physician assistant, under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, or dentists in the same or similar community who perform similar treatments or procedures; or

(b) The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the physician, osteopathic



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physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse, or physician assistant in accordance with the provisions of paragraph (a).

(4)(a) A consent which is evidenced in writing and meets the requirements of subsection (3) shall, if validly signed by the patient or another authorized person, raise a rebuttable presumption of a valid consent.

(b) A valid signature is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.

History.—s. 11, ch. 75-9; s. 21, ch. 85-175; s. 1150, ch. 97-102; s. 62, ch. 97-264; ss. 230, 297, ch. 98-166; s. 2, ch. 2007-176; s. 11, ch. 2016-145; s. 78, ch. 2018-106.

Note.—Former s. 768.132; s. 768.46.

ⁱ Section 768.13, Florida Statutes (2020).

ⁱⁱ Section 768.135, Florida Statutes (2020).