Minor's Consent and S.L. 2023-106: What Did and Did Not Change

FEBRUARY 15, 2024

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UNC SCHOOL OF GOVERNMENT

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Introductions: What is the SOG?

The mission of the **UNC School of Government (SOG)** is to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government.

The SOG offers more than 200 courses, webinars, and specialized conferences each year. These courses serve more than 12,000 public officials from all 100 North Carolina counties annually. Faculty also write, advise, and consult on matters of importance to North Carolina government.

The SOG's core values include being responsive, nonpartisan, and policy-neutral.

More information about the SOG can be found at www.sog.unc.edu.

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Presentation Roadmap

Deep Dive: NC Minor's Consent Law
- Overview of the law
- Confidentiality
- Minor's consent and vaccines

Other Pathways for Consent and Care for Minors
- Urgent/emergency situations
- Non-parent is given authority to consent
- Specific health services (abortion)

Deep Dive: Parental Consent Under S.L. 2023-106, Part 3
- Who must comply with the new law?
- What is (and isn't) "treatment?"
- Who can give consent?
- Memorializing consent (written v. documented)

Q+A Session

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Consent and Common Pathways for Providing Care to Minor Patients*

Category	Name	Description	Citation
Minor's Consent	Minor's consent	A minor with decisional capacity may give consent to a physician (or provider working under the direction of a physician) for the prevention, diagnosis, or treatment of conditions specified in the statute.	G.S. 90-21.5(a)
Urgent/Emergency Care	Urgent/emergency care provided by physicians	A physician (or provider working unde [illegible] physici[illegible]ction) m[illegible] provide care in certain time-sensitive situatior [illegible] t first obtaining parental consent.	G.S. 90-21.1
	Urgent/emergency care provided by school employees	Public school employees au[illegible] provide first aid, emergency [illegible] obtaining parental consent.	G.S. 115C-375.1
Non-Parent Authorized to Consent to Care	DSS director consents for minor's care	The DSS director (or her design[illegible] e, as well as testing and evalu[illegible] custody. DSS director ([illegible] court order.	G.S. 7B-505.1
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Available on the UNC School of Government website: www.sog.unc.edu

**Chart created by K. Leloudis- UNC SOG- Last updated 12/2023*

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LEGAL SUMMARY

Consent and Common Pathways for Providing Care to Minors (the "Rainbow Chart")

Sometimes referred to as "the rainbow chart," this document provides an overview of the most common ways in which care may be provided to minor patients and the associated consent requirements under North Carolina law.

LEGAL SUMMARY

"Required by Law" Disclosures of PHI to DSS: G.S. 7B-302 and 7B-3100 (Chart)

A chart summarizing the application of G.S. 7B-302(e) and 7B-3100(a) (requiring the disclosure of certain information to North Carolina departments of social services (DSS) in specific situations) to North Carolina local health departments (LHDs) that are also covered entities subject to HIPAA.

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A Few Quick Notes

- We will hold questions until the end
- I will be providing legal technical assistance (*what does the law say?*) but not legal advice (*what should I do to comply with the law?*)

  → Please consult an attorney or your licensing board, as appropriate, if you need situation-specific advice

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NC Minor's Consent Law

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**Chart created by K. Leloudis- UNC SOG- Last updated 12/2023*

Who is a “Minor?”

Anyone under 18, unless married or emancipated

Emancipation of a minor
- Emancipation is not common
- Minors who are 16 or 17 years old can become emancipated by a court

Marriage of a minor
- These days, only minors who are 16 and 17 can get married
- Note: this is a change as of August 2021; before then, minors as young as 14 and 15 could marry in NC

Reminder: becoming pregnant or having a child ***does not*** emancipate a minor in NC

Minor’s Consent

According to the CDC, in 2022 all 50 states and D.C. allowed minors to consent to certain health services
- NC minor’s consent law is found at G.S. 90-21.5(a)

Law allows minors with decisional capacity to consent, on their own, to medical health services for:
- Prevention, diagnosis, and/or treatment of
- Venereal/reportable diseases, pregnancy, emotional disturbance, and abuse of controlled substances/alcohol

NC minor’s consent law was **not changed** by S.L. 2023-106, Part 3

Minor's Consent

The law gives an unemancipated minor the **legal capacity** to consent to the services specified in the law

- But legal capacity by itself is not enough!
  - Provider must also determine that the minor has the **decisional capacity** (sometimes called "competence") to consent to the care
  - Capacity can be assessed similarly to how it is assessed in adults

Law does not establish a minimum or "cut off" age

- Age at which a minor patient can consent under this law will depend on whether that minor is found to have decisional capacity

Minor's Consent

Law says a minor may give effective consent to a "**physician**" who is licensed to practice in NC

- Has been interpreted to include providers working under a physician's supervision (e.g., nurses, physician assistants, etc.)
- **Note:** be mindful of other providers in your organization who may not be working under the supervision of a physician (e.g., some mental health providers)

Minor's Consent and Confidentiality

G.S. 90-21.4(b) is the law that governs the confidentiality of information about health services that a minor has received under G.S. 90-21.5(a)

- **Note:** When a minor consents under G.S. 90-21.5(a), the minor is the "individual" under HIPAA, too, and generally gets to decide if/how/when the information about the minor's consent encounter is shared

General rule:

- Cannot disclose information about a minor's consent encounter to the minor's parent, guardian, custodian, or PILP without the minor's permission

Exceptions: provider may* disclose to a parent, guardian, custodian, or PILP if:

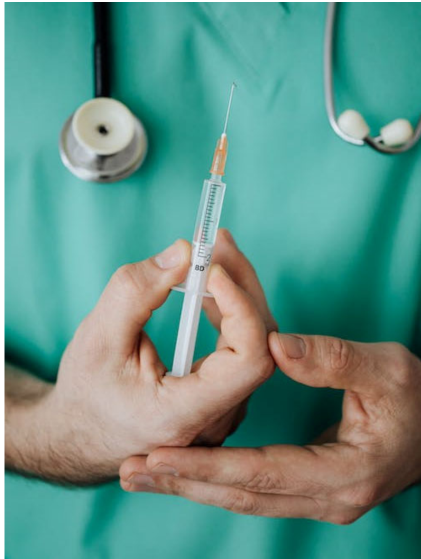
- Disclosure is essential to the life or health of the minor
- Parent, guardian, custodian, or PILP "contacts the physician concerning the treatment or medical services being provided to the minor"

**Disclosure is permitted, but not required*

Minor's Consent and Liability/Immunity

G.S. 90-21.4(a) establishes civil and criminal immunity for physicians who provide care to minors in accordance with G.S. 90-21.5 and without obtaining the consent for the care from a minor's parent, guardian, or PILP

- Only covers providing care to a minor without parental consent when doing so is permitted by law
- Does not cover negligent provision of care



Minor's Consent and Vaccines

G.S. 90-21.5(a) allows an unemancipated minor with decisional to consent, on their own, to receive medical health services for the **"prevention,** diagnosis and treatment" of:

- Venereal diseases/**other reportable diseases**
- Pregnancy
- Abuse of controlled substances/alcohol
- Emotional disturbance

This meant that early in the COVID-19 pandemic, a minor could consent to COVID-19 vaccination. But a few things changed…

Minor's Consent and Vaccines

The History

Early pandemic: COVID-19 ("novel coronavirus") is a reportable disease

- COVID vaccines first available under an FDA emergency use authorization (EUA)
- Minors can consent to COVID EUA vaccines on their own as prevention of a reportable disease

August 2021: change to NC minor's consent law

- Written parental consent now required for administration of *any* EUA vaccine to a minor
- COVID still a reportable disease, so minors can consent on their own to "fully approved" COVID vaccine

May 2023: COVID-19 is no longer considered a "novel coronavirus"- no longer reportable in NC

- Written parental consent required for administration of any EUA vaccine to a minor (including COVID)
- Parental consent (not necessarily written) required for minor to get a "fully approved" COVID vaccine

Knowledge Check

True or false?

Since S.L. 2023-106 (also known as S49, or the Parent's Bill of Rights) went into effect, minors are no longer able to consent to health care services on their own under the minor's consent law.

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Knowledge Check

True or false?

Since S.L. 2023-106 (also known as S49, or the Parent's Bill of Rights) went into effect, minors are no longer able to consent to health care services on their own under the minor's consent law.

This is **false.** NC's minor's consent law, G.S. 90-21.5, is intact and unchanged by S.L. 2023-106. Minors can continue to consent to certain health services under the NC minor's consent law in the same way they did before S.L. 2023-106.

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Knowledge Check

Scenario: Margaret is 15 years old, unemancipated, and sexually active. She's interested in starting hormonal contraception and wants to be tested for gonorrhea. Margaret goes to see a physician's assistant (PA) at the local health department. The PA has a conversation with Margaret about why she wants these services, the risks and benefits, alternative options, etc. and determines that Margaret has the decisional capacity to make decisions about starting birth control and receiving gonorrhea testing.

Question: Can Margaret be provided with these services under NC's minor's consent law?

Knowledge Check

Scenario: Margaret is 15 years old, unemancipated, and sexually active. She's interested in starting hormonal contraception and wants to be tested for gonorrhea. Margaret goes to see a physician's assistant (PA) at the local health department. The PA has a conversation with Margaret about why she wants these services, the risks and benefits, alternative options, etc. and determines that Margaret has the decisional capacity to make decisions about starting birth control and receiving gonorrhea testing.

Question: Can Margaret be provided with these services under NC's minor's consent law?

Answer: Yes. Birth control is a method of preventing pregnancy. Because gonorrhea is a reportable disease, the STI testing falls under diagnosis of a venereal disease or other reportable disease.

The PA has also determined that Margaret has the decisional capacity necessary to consent to these health services. The PA works under the supervision/direction of a physician and can therefore accept consent from Margaret.

Knowledge Check

Scenario: Jay is 17 years old and presents at the local health department inquiring about COVID-19 vaccines. Jay has already received the primary COVID-19 vaccine series and a booster about 9 months ago. Jay wants to receive the most up-to-date COVID vaccine today and asks if they can receive it on their own consent (without involving Jay's parents).

Question: Can Jay access the newest COVID vaccine on their own consent?

Knowledge Check

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Question: Can Jay access the newest COVID vaccine on their own consent?

Answer: No. As of May 2023, COVID is no longer considered a "novel coronavirus" and is therefore no longer a reportable disease in North Carolina. Therefore, even though Jay has received COVID vaccines in the past, Jay cannot access the COVID vaccine now under the NC minor's consent law. Jay needs one of the following:

- Written parental consent for a COVID vaccine that is under an EUA
- Parental consent (not necessarily written) for a "fully approved" COVID vaccine

Other Pathways for Consent and Care for Minors

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**Chart created by K. Leloudis- UNC SOG- Last updated 12/2023*

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Knowledge Check

Scenario: Luke, a third-grader, has no known history of allergic reactions. During lunch, Luke's classmate offers to share her cashew butter sandwich with him. Within moments, Luke begins displaying symptoms of anaphylaxis and is struggling to breathe. Luke's teacher rushes Luke to the school nurse's office. The school nurse assesses Luke quickly and believes it is necessary to administer an Epipen.

Question: Does the school nurse need to pause to obtain parental consent before administering the Epipen?

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Question: Does the school nurse need to pause to obtain parental consent before administering the Epipen?

Answer: **No.** School employees who are authorized to provide first aid, emergency care, or other life-saving techniques to students are not required to pause and get parental consent first. (This continues to be true following the passage of S.L. 2023-106, also known as S49 or the Parent's Bill of Rights).

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Knowledge Check

Scenario: Bex is 13 and in the custody of her county's Department of Social Services (DSS). Bex is currently living with a foster family. Bex's parents are also receiving DSS services and the goal is for Bex and her parents to be reunified in the next few months. Bex has a well-child visit scheduled for this week.

Question: Can the DSS director (or their designee) give consent for Bex's well-child visit?

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Question: Can the DSS director (or their designee) give consent for Bex's well-child visit?

Answer: **Yes.** This is routine care, which the DSS director (or designee) is authorized to consent to under G.S. 7B-505.1.

Note that Bex's foster parents do not have a role in providing consent to health care services. Foster parents are not parents, guardians, custodians, or PILPs and do not have legal authority to consent to care for their foster children.

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S.L. 2023-106 (S 49)

Part 1

- Creates a "Parent's Bill of Rights"
- Effective August 16, 2023

Part 2

- Outlines requirements related to parents' involvement in their child's education
- Effective date was August 16, 2023- budget bill (H 259) changed to various 2024 effective dates

Part 3

- Requires health care practitioners and facilities to obtain parental consent before providing treatment to a minor
- Effective December 1, 2023

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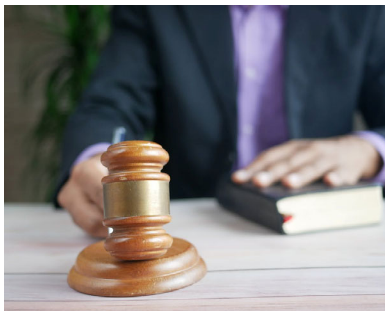

Penalties

Under the new law, a person who violates the new law may face:

- Disciplinary action (TBD) by licensing board
- Fine of up to $5,000

Additional liability possible- e.g., tortious battery, medical malpractice, etc.

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What Does This Change?

	Before S.L. 2023-106, Part 3	After S.L. 2023-106, Part 3
✓	**Parental consent required for most care for minors** *Not set out in statute, but implied by other statutes that say when care can be provided to a minor without parental consent*	**Parental consent required for most care for minors** *Parental consent requirement is now expressly stated in statutes*
✓	**Liability for failure to obtain parental consent when required** *Liability re: malpractice; some torts and criminal law; possible disciplinary action by licensing board*	**Liability for failure to obtain parental consent when required** ● *More specificity- violation can result in disciplinary action by licensing board (which is typically more than a letter of concern), max fine amount of $5k is higher typical fine cap in some fields* *Liability re: malpractice; some torts and criminal law*
✓	**Process for obtaining and memorializing consent** *Informed by various sources- law, practice standards, licensing board guidance, ethics, etc.*	**Process for obtaining and memorializing consent** ● *More specificity because of newly defined terms, including "parent," "health care practitioner," "treatment," etc.; raises questions about whether certain practices not historically thought of as treatment now meet the definition of "treatment" and require consent* *Various other sources still relevant and may apply- law, practice standards, licensing board guidance, ethics, etc.*

What Does the New Law Require?

Except as otherwise set out in G.S. 90, Article 1A or in a court order,

health care practitioners and **health care facilities** must obtain written or documented consent from the **parent** of a **minor** before providing **treatment** to that **minor**.

*__Bolded__ words have specific definitions under the new law

What Does the New Law Require?

Except as otherwise set out in G.S. 90, Article 1A or in a court order,

health care practitioners and **health care facilities**
must obtain written or documented consent
from the **parent** of a **minor**
before providing **treatment** to that **minor**.

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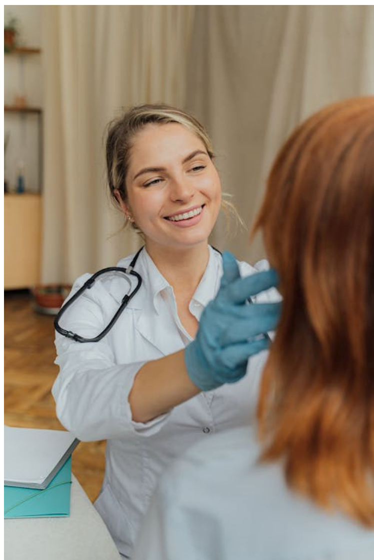

Who is a "Health Care Practitioner?"

G.S. 90- includes 40+ categories of professionals

- Examples: physicians, PAs, NPs, nurses, dentists, pharmacists, athletic trainers, occupational therapists, and more
- Some professionals licensed under G.S. 90 likely not covered because they do not provide health care to humans (e.g., vets)

G.S. 90B- social workers

G.S. 90C- recreational therapists

G.S. 115C- public school employees

What is a "Health Care Facility?"

G.S. 131E- licensure for hospitals and public hospital authorities

G.S. 122C- licensure for certain behavioral/mental health facilities

Note: Local health departments (LHDs) generally do not meet the definition of "health care facility"- however, LHDs likely employ "health care practitioners" who are subject to S.L. 2023-106, Part 3.

What Does the New Law Require?

Except as otherwise set out in G.S. 90, Article 1A or in a court order,

health care practitioners and **health care facilities** must obtain written or documented consent from the **parent** of a **minor** before providing **treatment** to that **minor**.

*__Bolded__ words have specific definitions under the new law

Who is a "Parent?"

Parent- natural (biological) or adoptive parent

- … whose right to make health care decisions for the minor have not been terminated or limited by a court or custody order

Guardian- a person appointed to that role by a court

Person standing *in loco parentis* (PILP)- person who has assumed parental responsibilities, including support and maintenance of the minor

- Does not include a babysitter, foster parent, or teacher

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What is "Treatment?"

S.L. 2023-106, Part 3 definition:

"Any medical procedure or treatment, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a health care practitioner, that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where the health care practitioner administers treatment to the minor child."

What is Not "Treatment?"

Services that are not required to be ordered or performed by a "health care practitioner" are not "treatment"

- Examples: peer-to-peer tobacco cessation, certain community education or birth doula services
- These types of services are not "treatment" even if they happen to be provided by a health care practitioner
  - Example: NP who volunteers as a peer tobacco cessation coach

What is *Not* "Treatment?"

Pre-school and school health screenings

- Used for early detection in asymptomatic population- not used to diagnose or treat
- Under NC law, vision and hearing screenings can be performed by lay (non-licensed) personnel
- Dental screenings must be performed by public health dental hygienists, but are considered "non-clinical procedures" under NC law

Note: health screenings offered in NC public schools may be subject to new requirement in S.L. 2023-106, Part 2

- School must have procedures for notifying parents, at the beginning of each school year, of the means for the parent to consent to health screenings
- Means to consent could be opt in or opt out procedures

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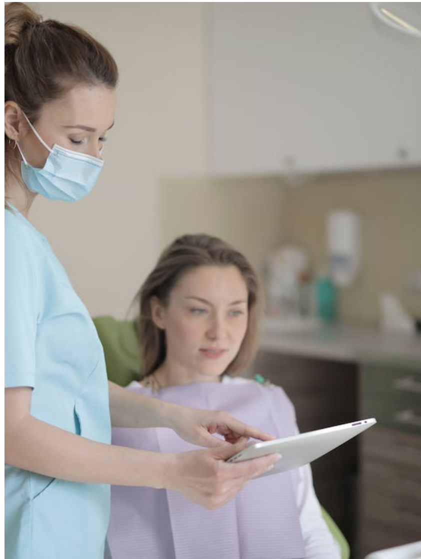


The Consent Process

Consent is a process- not just about getting a signature or a "yes"

- Involves exchange between provider and patient (or patient's representative)
- Discussion of risks, benefits, alternatives, and more- this is what makes consent "informed"

S.L. 2023-106, Part 3 does not change law or standards for informed consent

- New law codifies requirement that the result of the consent process- a parent agreeing to a treatment for their minor child- is memorialized in writing or otherwise documented

Written Consent

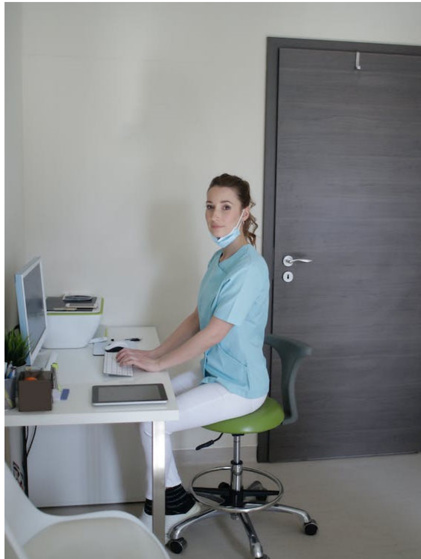
New law does not define "written consent"

Could be in printed hardcopy or electronic

Typically recites key points of consent process discussion (risks, benefits, alternatives, etc.) and has a place to sign

Common examples:

- General consent to treat
- Standardized forms created by a government agency
- Consent checklists



Documented Consent

New law does not define "documented consent"

Common example:

- Provider and patient's parent go through the consent process for a specific treatment and parent orally gives consent to the treatment. Provider then documents that consent was given in the minor patient's record.

New law does not appear to prohibit oral consent given over the phone and then documented

- … but appropriateness of this approach will depend on various factors, including standard of care, practitioner's confidence that person on the phone is a parent, nature of the treatment, etc.

Written v. Documented: Which One Should I Use?

S.L. 2023-106, Part 3 requires written "or" documented consent

- Does not appear to give preference to one approach v. the other

However, here may be situations where written consent is required by law or is considered best practice

- Example: G.S. 90-21.5(a1) requires that a health care provider obtain "written consent" from a parent or legal guardian before administering a vaccine that is still under an emergency use authorization (EUA) to a minor

Knowledge Check

True or false?

Foster parents are included in the definition of "parent" under S.L. 2023-106, Part 3 and can consent to health care services for their foster children.

Knowledge Check

True or false?

Foster parents are included in the definition of "parent" under S.L. 2023-106, Part 3 and can consent to health care services for their foster children.

This is **false.** Foster parents do not meet the definition of a "parent" under the new law- they are not biological/adoptive parents, guardians, or PILPs.

→ Who can consent? DSS director (or designee) or parent, depending on the type of care. See G.S. 7B-505.1.

→ Foster parents can bring the minor to appointments, though. Challenges with consent when DSS not present at the appointment? Consider electronic forms and oral consent that is documented (if appropriate).

Knowledge Check

True or false?

In situations where parental consent must be obtained before providing treatment to a minor, it is *never* acceptable to obtain consent from a parent orally over the phone and then document the consent in the minor's health record.

Knowledge Check

True or false?

In situations where parental consent must be obtained before providing treatment to a minor, it is *never* acceptable to obtain consent from a parent orally over the phone and then document the consent in the minor's health record.

This is **false.** S.L. 2023-106, Part 3 requires "written or documented" parental consent. The new law does not appear to prohibit oral consent given over the phone and then documented in the minor patient's record.

→ *However,* the appropriateness of this approach will depend on various factors, including standard of care, practitioner's confidence that person on the phone is a parent, nature of the treatment, etc.

Image References

The images on slide #2 and #5 belong to the presenter and may be copied and used as part of distribution of this slide deck.

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Other References

Statutory Citations

- G.S. 90-21.5(a): minor's consent law
- G.S. 90-21.1: provision of care by physicians in urgent/emergency situations
- G.S. 115C-375.1: provision of first aid, emergency care, and life saving techniques by certain public school employees
- G.S. 7B-505.1: DSS director authority to consent to certain care for minor in DSS custody
- G.S. 32A, Art. 4: minor health care power of attorney
- G.S. 90-21.7, 21.8: consent and abortion services for a minor
- G.S. 90-21.10A, 21.10B, 21.10C: newly codified parental consent for treatment requirements

Other Materials

- CDC, "State Laws that Enable a Minor to Provide Informed Consent to Receive HIV and STD Services," last accessed February 2, 2024, https://www.cdc.gov/hiv/policies/law/states/minors.html

Additional Resources

UNC School of Government Bulletins on S.L. 2023-106

- January 2024- "Consent to Care for Minor Parents: An Update on the Legal Landscape after S.L. 2023-106, Part III," https://www.sog.unc.edu/publications/bulletins/consent-care-minor-patients-update-legal-landscape-after-sl-2023-106-part-iii

UNC School of Government Blog Posts on S.L. 2023-106

- August 2023- "What's the Status of North Carolina's Minor's Consent Law After S.L. 2023-106?," https://canons.sog.unc.edu/2023/08/sl2023-106-and-minors-consent/
- September 2023- "S.L. 2023-106: Parents' Rights, Who Is a Parent, and Juvenile Abuse, Neglect, and Dependency Cases," https://canons.sog.unc.edu/2023/09/s-l-2023-106-parents-rights-who-is-a-parent-and-juvenile-abuse-neglect-and-dependency-cases/ (by Sara DePasquale)
- October 2023- "What Is (or Isn't) "Treatment" of a Minor Under S.L. 2023-106, Part 3?," https://canons.sog.unc.edu/2023/10/sl2023-106_treatment/
- November 2023- "Obtaining Written or Documented Parental Consent for Treatment of a Minor Under S.L 2023-106, Part 3," https://canons.sog.unc.edu/2023/11/parental_consent_treatment/

UNC School of Government Blog Posts on Related Topics

- November 2015, "New Law: Consenting to Medical Treatment for a Child Placed in the Custody of County Department," https://canons.sog.unc.edu/2015/11/new-law-consenting-to-medical-treatment-for-a-child-placed-in-the-custody-of-county-department/ (by Sara De Pasquale)
- October 2022- "An Update on Minor's Consent: Changes to the Law and Implications for COVID-19, Mpox, and Beyond," https://canons.sog.unc.edu/2022/10/minors-consent-change-covid19-monkeypox-and-beyond/
- March 2023- "Who is a "Person Standing In Loco Parentis" and When Can They Consent to Health Care for a Minor?," https://canons.sog.unc.edu/2023/03/in-loco-parentis-consent-healthcare-minors/
- May 2023- "COVID-19 Is No Longer "Reportable" in North Carolina: Implications for Minor's Consent," https://canons.sog.unc.edu/2023/05/covid-19-is-no-longer-reportable-in-north-carolina-minors-consent/

Questions?

Thank you for your time.

If you have additional questions at a later date, please send me an email or give me a call.

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Office: 919-966-4210

Evaluation

Thank you for attending the FP Minor's Consent Webinar!

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