

Summary of Parents' Rights in Medical and Mental Health Treatment for Their Children

The following is a general summary intended to provide parents and legal guardians with an overview of their rights in the following three areas of decision-making and treatment for their children: medical treatment, mental health treatment, and drug and alcohol treatment. This summary is not a substitute for legal advice and should not be relied upon as such. If you are dealing with a specific legal problem, it is recommended that you consult with an attorney who is knowledgeable in the specific area of the law.

MEDICAL TREATMENT

Who can consent to medical care for a child?

Summary: Parents and legal guardians can consent to inpatient or outpatient medical treatment for a child under 18 without the child's consent.

Parents and guardians in Pennsylvania have the legal authority and the duty to make medical decisions for children under 18. They also have the duty of seeking medical help when the life of their child is in danger. Ultimately, parents have the responsibility and authority for all inpatient or outpatient medical care for their children. There is an emergency exception to this rule, which states that medical, dental, and health treatment may be given to a child without the parents' consent if the child's life or health is in danger.

This rule no longer applies once a child meets one of the following conditions:

- Has reached 18 years of age
- Has graduated from high school
- Has married
- Has been pregnant

Once a child turns 18 or meets one of these other conditions, the child's own consent to medical treatment is sufficient. Additionally, a child under 18 who has been or is a parent has the right to consent to medical, dental, and other health services for his/her own child.

NOTE: Abortion is treated differently from medical care in Pennsylvania. Although parental consent is required for a pregnant woman under the age of 18 to obtain an abortion, there are exceptions. A person acting *in loco parentis* may give consent if a parent or guardian is unable to provide consent. Additionally, if a minor's parents either refuse to consent to the abortion or a minor chooses not to seek the consent of a parent or guardian, the minor can file a petition to request a court to authorize the abortion. Before issuing the order, the court must determine whether or not the pregnant woman is mature and is capable of giving consent to the abortion. This is called a judicial bypass.

Citations:

- The Minors' Consent Act, 35 P.S. §10101
- Abortion Control Act, 18 Pa. C.S. § 3206

MENTAL HEALTH TREATMENT

Who can consent to mental health treatment for a child?

The answer to this question depends on the age of the minor and whether the treatment is provided as inpatient or outpatient care.

Parents of children under the age of 14 are able to make most decisions regarding mental health treatment for their children, but they do not have unlimited authority over these decisions. Under Pennsylvania law, children age 14 or older have the ability to provide their own consent for mental health treatment. Although parents do not have legal authority to negate the consent to mental health treatment given by a child age 14 or older, parents have other rights in this area. For parents actively dealing with these issues, we recommend that you consult with legal counsel. The following information is intended to provide only general guidance in these matters.

Inpatient Mental Health Treatment

Who can consent to inpatient mental health treatment for a child?

A parent or guardian has the legal right to consent to inpatient treatment for a child under the age of 18 without the child's consent. However, parental consent for inpatient treatment requires a recommendation by a physician, licensed clinical psychologist, or other mental health professional who determines that such treatment is necessary. Children under 18 cannot override parental consent to treatment. However, any child who is 14 or older has the right to legally object to continuing inpatient treatment and will be advised by the inpatient facility of that right. The child may object by filing a petition which requests a court hearing to evaluate the necessity of continuing treatment. Upon receiving a petition by the child, the court is required to hold a hearing within 72 hours.

A child who is 14 or older has the right to consent to inpatient mental health treatment without a parent's consent. If a facility receives an application from a child age 14 or older for inpatient treatment, the facility must notify the child's parents and advise them of their right to file an objection. If the parents do file an objection, the court must hold a hearing within 72 hours of receiving the petition to determine if the treatment is within the child's best interest.

When can consent to inpatient treatment be revoked?

Parents may revoke their consent to treatment of a child at any time. However, a child age 14 years or older has the right to consent to continuing the treatment. If a child age 14 or older has consented to further treatment, parents cannot override their child's consent without filing a petition with the court. A child who has consented to continuing treatment may revoke that consent unless the child's parents consent to further treatment that is recommended by a mental health professional.

Additionally, parents cannot overturn each other's consent. If both parents have legal custody rights and one objects to inpatient treatment, the non-consenting parent may file a petition in court. The court is required to hold a hearing within 72 hours.

Outpatient Mental Health Treatment

Who can consent to outpatient mental health treatment for a child?

A parent or guardian has the legal right to consent to outpatient treatment for a child under the age of 18 without the child's consent. Unlike consent for inpatient mental health treatment, professional recommendation for outpatient mental health treatment is not necessary. Also, unlike the procedures for inpatient care, there is no procedure for a child to legally object to outpatient treatment.

A child age 14 or older has the legal right to consent to his/her own outpatient mental health treatment without the consent of a parent or guardian. A parent does not have the right to override their child's consent in this case.

Citations:

- Minors' Consent to Medical Care - 35 P.S. §10101.1 - §10101.2; Pennsylvania's Mental Health Procedures Act, 50 P.S. §7204

DRUG AND ALCOHOL TREATMENT

Who can consent to drug and alcohol Treatment?

Under Pennsylvania law, a child of any age may consent to counseling or medical treatment related to drug and alcohol abuse. The consent of a minor in this case is valid and legally binding as if they are an adult. Parental consent is not necessary for diagnosis or treatment. Additionally, although providers may inform parents or guardians of a minor's treatment or need for treatment, there is no legal duty that requires a drug and alcohol treatment program to notify parents or guardians of any treatment provided. A minor is able to provide consent for parental notification, but can also revoke that consent at any time.

Parents may consent to a child's treatment for drug and alcohol abuse. However, where a minor is unwilling to accept voluntary treatment, parents must follow the procedures outlined below:

Procedure for Involuntary Commitment:

Parents or guardians must file a petition for commitment of a child for involuntary drug and alcohol treatment, including inpatient services.

This is a process that requires the following legal steps:

1. A parent with legal or physical custody may petition the court of common pleas of the judicial district where the child lives if the child cannot or will not accept voluntary treatment.
2. After a petition has been filed, the court will appoint counsel for the child and will order the child to undergo drug and alcohol assessment.
3. The court will hold a hearing to examine the results from the assessment.
4. Based on the results of the assessment, the court can order that the child be committed to involuntary treatment, including inpatient treatment, for up to 45 days. Before the period of 45 days is up, the court will determine whether or not further treatment is necessary and may order additional treatment periods of up to 45-days, as long as the child needs treatment.

Citations:

- Pennsylvania Drug and Alcohol Abuse Act (71 P.S. §1690.112)



717-545-0600 • 23 N. Front St., Harrisburg, PA 17101
 /pafamily  @PFIPolicy  /pafamilycouncil