

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 157

(Senator Nathan-Pulliam, *et al.*)

Finance

Health and Government Operations

**Consultation, Diagnosis, and Treatment of Mental and Emotional Disorders -
Consent by Minors**

This bill establishes that a minor who is age 16 or older has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by a health care provider. This capacity to consent does not extend to the capacity to refuse consultation, diagnosis, or treatment for which a parent, guardian, or custodian of the minor has given consent. The bill defines “health care provider” as an individual licensed under the Health Occupations Article and acting within the scope of the individual’s license to diagnose and treat mental and emotional disorders.

The bill also authorizes a health care provider, or a member of a hospital medical staff or public clinic on the direction or advice of a health care provider, to give a minor’s parent, guardian, or custodian, or the parent’s spouse, information about treatment the minor needs or received, without the consent of or over the express objection of a minor. If a health care provider is on a treatment team for a minor that is headed by a physician, the physician must decide whether the minor’s parent, guardian, or custodian, or the parent’s spouse, should receive information about the minor’s needed treatment.

Fiscal Summary

State Effect: None. The change does not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A minor who is age 16 or older has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by a physician, psychologist, or a clinic. The capacity to consent does not extend to the capacity to refuse consultation, diagnosis, or treatment for a mental or emotional disorder for which the minor's parent, guardian, or custodian has given consent.

Without the consent of or over the express objection of a minor, the attending physician, psychologist, or, on advice or direction of the attending physician or psychologist, a member of the medical staff of a hospital or public clinic may, but need not, give a parent, guardian, or custodian of the minor, or the parent's spouse, information about treatment the minor needs or received.

A minor's parent, guardian, or custodian is not liable for the costs of the consultation, diagnosis, or treatment of the minor unless the parent, guardian, or custodian consented to the consultation, diagnosis, or treatment.

The federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule prohibits health care providers from disclosing certain information about individuals being treated for mental health conditions. However, for minors, state consent laws control: the HIPAA Privacy Rule permits a health care provider to disclose a minor's protected health information to a parent or guardian when and to the extent it is permitted or required by state law. Likewise, the HIPAA Privacy Rule prohibits disclosure when and to the extent it is prohibited by state law. The HIPAA Privacy Rule also defers to state law in determining the age of majority and the rights of parents to make health care decisions for a child.

Background: According to the National Alliance on Mental Illness, four million children and adolescents in the United States suffer from a serious mental disorder, and 21% of children ages 9 to 17 have a diagnosable mental or addictive disorder that causes at least minimal impairment. Only 20% of children with mental disorders are identified and receive mental health services in any given year. The National Institute of Mental Health also reports that about 8% of teenagers (ages 13 to 18) have an anxiety disorder, but only 18% receive mental health care.

On January 29, 2015, the New Jersey legislature passed a bill that authorizes minors to consent to the treatment of a mental illness or emotional disorder by specified licensed professionals, including (but not limited to) psychiatrists, licensed practicing psychologists, certified social workers, licensed clinical social workers, licensed marriage and family therapists, and certified psychoanalysts. The bill, titled the "Boys and Girls Clubs Keystone Law," was an initiative of the Boys and Girls Clubs of Hudson County,

which wanted to help teenagers access mental health services without the need of parental consent. In a *NJ Spotlight* article, bill supporters noted that minors are often unable to obtain consent from their parents or guardians for mental health services for a variety of reasons, including internal family discord or a general fear of sharing mental health concerns with parents due to social stigma. Obtaining parental consent can also be difficult or impractical where the parents are actually the cause of a minor's mental health or emotional issues.

Additional Information

Prior Introductions: None.

Cross File: HB 662 (Delegate Cullison, *et al.*) - Health and Government Operations.

Information Source(s): National Alliance on Mental Illness, National Institute on Mental Health, *NJ Spotlight*, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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