

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 41

(Senator Augustine)

Finance

Health and Government Operations

Health – Mental and Emotional Disorders – Consent (Mental Health Access Initiative)

This bill lowers the age for a minor to give informed consent in certain situations. Specifically, the bill establishes that a minor who is at least age 12 and is determined by a health care provider to be mature and capable of giving informed consent has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by the health care provider or a clinic. The capacity of any minor to refuse consultation, diagnosis, treatment for a mental or emotional disorder for which a parent, guardian, or custodian of the minor has given consent remains unchanged. Also, except as otherwise provided, a minor younger than age 16 may not consent to the use of prescription medications to treat a mental or emotional disorder. The bill also authorizes a health care provider to decide to provide specified information to a parent, guardian, or custodian of a minor unless the health care provider believes that the disclosure will lead to harm to the minor or deter the minor from seeking care.

Fiscal Summary

State Effect: To the extent service utilization by eligible minors increases under the bill, general and federal fund expenditures for the Behavioral Health Administration and Medicaid may increase by an indeterminate amount. Federal fund revenues increase accordingly.

Local Effect: To the extent utilization increases for eligible students receiving mental health services at public schools, expenditures may increase for local school systems by an indeterminate amount. Local health departments may experience an increase in utilization as well. Revenues are not materially affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Minor's Capacity to Consent Regarding a Mental or Emotional Disorder

A minor who is at least age 16 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 or a clinic. The capacity of a minor to consent does not include the capacity to refuse consultation, diagnosis, or treatment for a mental or emotional disorder for which a parent, guardian, or custodian of the minor has given consent.

Except under certain circumstances, without the consent of or over the express objection of a minor, the health care provider or, on advice or direction of the health care provider, a member of the medical staff of a hospital or public clinic may give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor.

If a health care provider is on a treatment team for a minor that is headed by a physician, the physician heading the treatment team must decide whether a parent, guardian, or custodian of the minor or the spouse of the parent should receive information about treatment needed by the minor or provided to the minor.

Unless the parent, guardian, or custodian of a minor consents to consultation, diagnosis, or treatment of the minor, the parent, guardian, or custodian is not liable for any costs of the consultation, diagnosis, or treatment of the minor.

Minor's Capacity to Consent to Medical Treatment

A minor has the same capacity as an adult to consent to medical or dental treatment if the minor is (1) married; (2) the parent of a child; or (3) living separate and apart from the minor's parent(s) or guardian and self-supporting.

A minor has the same capacity as an adult to consent to (1) treatment for or advice about venereal disease, pregnancy, contraception other than sterilization, drug abuse, and alcoholism; (2) physical examination and treatment of injuries from, or to obtain evidence of, an alleged rape or sexual offense; (3) initial medical screening and physical examination on and after admission of the minor into a detention center; and (4) treatment for the prevention of HIV.

A minor also has the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by a delay of treatment to obtain another individual's consent.

Small Business Effect: Small businesses that provide consultation, diagnosis, and treatment of mental or emotional disorders may provide additional care to eligible minors.

Additional Information

Prior Introductions: SB 611 of 2020, as amended, passed in the Senate but received no further action from the House Health and Government Operations Committee. Its cross file, HB 782, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Designated Cross File: HB 132 (Delegate Bagnall) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland School for the Deaf; Maryland Department of Health; Department of Human Services; Department of Juvenile Services; Department of Legislative Services

Fiscal Note History: First Reader - January 28, 2021
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