

**2023 – 2024 Legislative Memorandum**

**Subject: Authorizing young people to consent to health care when appropriate  
A.6761 (Reyes)**

**Position: SUPPORT**

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It is imperative that all young people have access to health care when they need it. Timely treatment and preventative care are critical for young people’s health and wellbeing and enable them to excel in school and beyond. Involving parents and guardians in a young person’s health care decisions is ideal, and, indeed, parent and family support is a primary predictor of a young person’s wellbeing.<sup>1</sup> At the same time, not all young people have healthy, safe family relationships. In many cases, and in particular for sensitive care, young people will not seek health care if they are required to involve a parent or their confidentiality is compromised.<sup>2</sup>

Because New York recognizes the necessity of timely access to health care, the State already permits all young people to consent to certain types of confidential health care<sup>3</sup> and permits certain categories of young people to consent to all types of health care.<sup>4</sup> However, this patchwork of laws leaves some young people without a path to receive needed care.

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<sup>1</sup> See generally L. Edwards-Leeper & N. P. Spack, *Psychological evaluation and medical treatment of transgender youth in an interdisciplinary “Gender Management Service” (GeMS) in a major pediatric center*, 59 J. OF HOMOSEXUALITY 321 (2012); J. Rafferty, *Ensuring comprehensive care and support for transgender and gender-diverse children and adolescents*, 142 PEDIATRICS (2018).

<sup>2</sup> Jonathan Klein et al., “Access to medical care for adolescents: Results from the 1997 Commonwealth Fund Survey of the Health of Adolescent Girls,” 25 J. OF ADOLESCENT HEALTH 120 (1999).

<sup>3</sup> E.g. N.Y. Pub. Health Law § 2305(2) (McKinney 2017) (“A licensed physician, or in a hospital, a staff physician, may diagnose, treat or prescribe for a person under the age of twenty-one years without the consent or knowledge of the parents or guardian of said person, where such person is infected with a sexually transmitted disease, or has been exposed to infection with a sexually transmitted disease.”); 10 N.Y.C.R.R. § 23.1 (2017); N.Y. Pub. Health Law § 2504(3) (McKinney) (“Any person who is pregnant may give effective consent for medical, dental, health and hospital services relating to prenatal care.”); See generally TEENAGERS, HEALTH CARE, AND THE LAW: A GUIDE TO MINORS’ RIGHTS IN NEW YORK STATE (NYCLU, 2018).

<sup>4</sup> E.g. N.Y. Pub. Health Law § 2504(1) (McKinney) (“Any person who . . . is the parent of a child or has married, may give effective consent for medical, dental, health and hospital services for himself or herself, and the consent of no other person shall be necessary.”); N.Y. Correct. Law § 505 (“Where an incarcerated individual who is not yet eighteen years of age has been committed to the custody of the sheriff or other person in charge of a local correctional facility and no medical consent has been obtained

A.6761 (Reyes) would fill the gaps in New York law by allowing decisionally-capable young people to consent to their own health care. That means young people who are mature enough to understand the need for, the nature of, and the reasonably foreseeable risks and benefits involved in a contemplated health care, as well as any alternatives to that care. The comprehensive bill also removes related barriers to young people’s access to health care by expanding confidentiality protections for young people who consent to their own care and setting up a payment mechanism that allows young people who do not have health insurance or who cannot use their parents’ health insurance to enroll in Medicaid for the health care they consent to themselves without having to withdraw from their parents’ health insurance for other types of care. These additional protections are necessary to ensure that young people can vindicate the consent rights the bill provides.

The NYCLU strongly supports A.6761 and urges its immediate passage.

This legislation is long overdue in New York. Nationwide, more than 20 states, either through statute or judicial decision, allow mature young people to consent to their own health care.<sup>5</sup> Indeed, the only court in New York to consider the issue recognized the gaps in New York law and recommended “that the legislature or the appellate courts take a hard look at the ‘mature minor’ doctrine [the doctrine that allows decisionally-capable young people to consent to their own health care] and make it either statutory or decisional law in New York State.”<sup>6</sup>

Parents will – and should – continue to be involved in the vast majority of young people’s health care decisions. This bill sets up an important safety-net to allow those young people who have unsafe family relationships or who are unable to involve their families to seek and receive necessary health care. For these reasons, the NYCLU urges its immediate passage.

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prior to commitment, the commitment order shall be deemed to grant to the minor the capacity to consent to routine medical, dental and mental health services and treatment to himself or herself.”); N.Y. Correct. Law § 140 (McKinney) (“Where an incarcerated individual who is not yet eighteen years of age has been committed or transferred to the custody of the department and no medical consent has been obtained prior to commitment or transfer, the commitment order shall be deemed to grant to the minor the capacity to consent to routine medical, dental and mental health services and treatment to such an individual.”); *Zuckerman v. Zuckerman*, 546 N.Y.S.2d 666, 668 (2d Dep’t 1989) (citing *Gittleman v. Gittleman*, 438 N.Y.S.2d 130, 132 (2d Dep’t 1989)); see also *Matter of Bates v. Bates*, 310 N.Y.S.2d 26 (Fam. Ct. Westchester Cty. 1970) (emancipated young people may consent to their own health care); see generally TEENAGERS, HEALTH CARE, AND THE LAW: A GUIDE TO MINORS’ RIGHTS IN NEW YORK STATE (NYCLU, 2018).

<sup>5</sup> Id. Stat. Ann. § 39-4503 (West 2021); Ark. Code Ann. § 20-9-602; *Belcher v. Charleston*, 422 S.E.2d 827 (W. Va. 1992); *In re E.G.*, 549 N.E.2d 322 (Ill.1989); Ala. Code. § 22-8-4 (2021); *Cardwell v. Bechtol*, 724 S.W.2d 739 (Tenn. 1987); Or. Rev. Stat. Ann. § 109.640; Kan. Stat. Ann. § 38-123b (2021); *Younts v. St. Francis Hosp. & Sch. of Nursing, Inc.*, 469 P.2d 330, 337 (Kan. 1970); 23 R.I. Gen. Laws § 23-4.6-1 (West 2021); S.C. Code Ann. § 63-5-340 (2021); Mont. Code Ann. § 41-1-402 (2021); 35 Pa. Cons. Stat. § 10101 (West 2021); Alaska Stat. Ann. § 25.20.025; Me. Stat. tit. 22, § 1503; *In re Swan*, 569 A.2d 1202 (Me.1990); Minn. Stat. Ann. § 144.341; Nev. Rev. Stat. § 129.030 (West 2021); Ind. Code Ann. § 16-36-1-3; Ind. Code Ann. § 16-34-2-4; Cal. Fam. Code § 6922; Colo. Rev. Stat. Ann. § 13-22-103; Del. Code Ann. tit. 13 § 707(b)(5) (2021); La. Stat. Ann. § 40:1079.1 (2021).

<sup>6</sup> *In re Application of Long Island Jewish Med. Ctr.*, 557 N.Y.S.2d 239, 243 (Sup. Ct. Queens Cty. 1990).