F I S C A L I M P A C T R E P O R T

SPONSOR Ortiz y Pino **ORIGINAL DATE** 02/18/09 **LAST UPDATED** 03/18/09 **HB**

SHORT TITLE Unemancipated Minor Health Care Decisions **SB** 569/aSPAC/aSJC/aHJC

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Children, Youth and Families Department (CYFD)
Department of Health (DOH)
Attorney General's Office (AGO)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis HJC Amendment

The House Judiciary Committee amendment of Senate Bill 569 deletes the Senate Judiciary Committee amendment and inserts on page 5, between lines 8 and 9, the following: "E. A health-care provider or a health-care institution shall not be liable for reasonably relying on statements made by an unemancipated minor that the minor is eligible to give consent pursuant to Subsection A of this section.". The succeeding subsection is re-lettered accordingly.

Synopsis SJC Amendment

The Senate Judiciary Committee amendment of Senate Bill 569 inserts the following on page 5, between lines 8 and 9: "E. A health-care provider or a health-care institution shall not be liable for relying in good faith on statements made by an unemancipated minor that the minor is eligible to give consent pursuant to Subsection A of this section.". The succeeding subsection is re-lettered accordingly.

Synopsis SPAC Amendment

The Senate Public Affairs Committee amendment of Senate Bill 569 clarifies that an

unemancipated minor may give consent for medically necessary health care provided the minor is living apart from the minor's parents; "or" legal guardian or the parent of a child. The amendment deletes language permitting a health-care provider's judgment as grounds upon which to base a minor's consent to treatment. Also, the amendment adds language to clarify that nothing in the section is to otherwise limit the rights of the unemancipated minor to consent to treatment, nor is the section to be read to conflict with the rights of parents or children pursuant to the Children's Mental Health and Developmental Disabilities Act.

Synopsis of Original Bill

Senate Bill 569 amends Section 24-7A-17 NMSA 1978 of the Uniform Health-Care Decisions Act relating to health care decisions for unemancipated minors to remove subsection G of that section which currently provides that an unemancipated minor means a person at or under the age of fifteen. The proposed legislation also enacts a new Section 24-7A-6.2 to that Act to provide that an unemancipated minor fourteen years of age or older who has capacity to consent may give consent for medically necessary health care; provided that the minor is living apart from the minor's parents or legal guardian; the parent of a child; or in a health-care provider's judgment, in danger of suffering serious health consequences if health care services are not provided.

The new section defines ""medically necessary health care" to mean clinical and rehabilitative, physical, mental or behavioral health services that are essential to prevent, diagnose or treat medical conditions or that are essential to enable an unemancipated minor to attain, maintain or regain functional capacity; delivered in the amount and setting with the duration and scope that is clinically appropriate to the specific physical, mental and behavioral health-care needs of the minor; provided within professionally accepted standards of practice and national guidelines; and required to meet the physical, mental and behavioral health needs of the minor, but not primarily required for convenience of the minor, health-care provider or payer.

The proposed legislation also provides that the consent of the unemancipated minor to examination or treatment pursuant to this section shall not be disaffirmed because of minority and that the parent or legal guardian of an unemancipated minor who receives medically necessary health care is not liable for payment for those services unless the parent or legal guardian has consented to such medically necessary health care; provided that the provisions of the new section do not relieve a parent or legal guardian of liability for payment for emergency health care provided to an unemancipated minor.

FISCAL IMPLICATIONS

AOC stated there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law.

SIGNIFICANT ISSUES

CYFD noted the proposed legislation amends the Uniform Health Care Decisions Act to recognize the rights of minors age 14 and older to consent to medically necessary health care if they have the capacity to do so. This recognition is consistent with the age designated in the Mental Health Code for a minor to consent to voluntary mental health treatment and the age designated in the Child Abuse and Neglect Act for a minor to be provided his or her own attorney in an abuse or neglect case. The proposed legislation modifies current law under which minor

parents living independently can make health care decisions for their children but not for their own care. This recommended change to law was discussed and approved by a multi-disciplinary group of professionals in Children's Law who reviewed the Children's Code in 2008 and approved this modification to existing law.

DOH noted the new section, 24-7A-6.2, does not define how one determines whether the specified minor has capacity to consent. The existing section of the Uniform Health Care Decisions Act that relates to life-sustaining treatment for unemancipated minors, 24-7A-6.1, has a subsection that delineates the determination of mental and emotional capacity (D). It is not clear if the new section relies on the same determination or if a different one should be used.

The new section of the bill carves out three categories of unemancipated minors 14 or older who may give consent for medically necessary health care: those living apart from parents/guardians; those who are the parent of a child; or those who are deemed by health care provider to be in danger of suffering serious health consequences if health care services are not provided. DOH stated the second category, those who are themselves the parent of a child, does not fit with the other two categories. In the first and third categories, the ability to consent to medically necessary health care without parental consent is perhaps a logistical and practical requirement in that there may be no parent/guardian available to give consent for care. It is difficult to discern the need or ability to consent to health care by an unemancipated minor 14 or older simply because he/she is the parent of a child. For example, that 14-year-old parent could still be living with his/her parent.

DOH reported the new section of the bill defining "medically necessary health care" needs to be narrowed and made more specific. Almost any requested medical care would be deemed "medically necessary". The definition could result in ongoing debate as to what is medically necessary.

Section D of the new section addresses payment of the medically necessary health care for the unemancipated minor. Unless the care was "emergency health care," the parents of the unemancipated minor who gave consent to health care are not obligated to pay. DOH reported even if an unemancipated minor consents to non-emergency care without consent of a parent/guardian, this provision of the proposed legislation alone will not necessarily discharge the parent/guardian's liability for the health care. It is likely to discourage health care providers from providing care, as unemancipated minors are generally a group with less financial resources and less health insurance coverage than adults. Further, 24-7A-6.2A(3) allows an unemancipated minor 14 or older who has capacity to consent to give consent for medically necessary health care if in a health care provider's judgment the minor is in danger of suffering serious health consequences if health care services are not provided. Such a situation could be deemed "emergency health care." Thus an unemancipated minor can consent to health care when there is a health emergency. Yet according to subsection D, even though the minor is given the ability to consent without need for parental consent, if the care provided is "emergency health care" then the parents are liable for payment. DOH stated the proposed legislation simultaneously allows the minor to consent to emergency health care and yet makes the parent who has not consented financially liable for that care. Yet if the minor lives apart from the parent/guardian or is him/herself a parent and seeks non-emergency care but medically necessary care, then the parent is not liable. It is difficult to discern a rationale for this distinction and it will be unenforceable.

AGO stated the proposed legislation would provide another exception to current law which generally provides that a parent or guardian of an unemancipated minor at or under the age of fifteen may make that minor's health-care decisions, other than decisions with respect to life sustaining treatment Section 24-7A-6.1A NMSA 1978 and 24-7A-6.1C NMSA 1978.

AGO reported the proposed legislation would expand New Mexico's version of the "mature minor doctrine", which is now contained in several different statutes. That doctrine authorizes children who show understanding of the risks and benefits of proposed treatment to consent to that treatment and was developed to prevent the usual necessity for parental consent from becoming a barrier to treatment. New Mexico state law currently applies that doctrine to medical decisions of emancipated married minors; decisions regarding life sustaining treatment; consent to an examination and diagnosis by a licensed physician for pregnancy; emergency contraception for sexual assault survivors; blood donation etc. See NMSA Sections 24-10-1; 24-10-6; 24-7A-6.1C; 24-1-13; and 24-10D-3. The United States Supreme Court has discussed that doctrine with regard to reproductive rights and parental notification before a minor may obtain an abortion. *Bellotti v. Baird*, 443 U.S. 622 (1979); *H.L. v. Matheson* 450 U.S. 398 (1981).

AGO stated the provisions of new section 24-7A-6.2 are inconsistent. Subsection B(1) requires that "medically necessary health care" be "essential to prevent, diagnose or treat medical conditions or that are essential to enable an unemancipated minor to attain, maintain or regain functional capacity." However, Subsection B(4) also requires that the health care be "required to meet the physical, mental and behavioral health needs of the minor, but not primarily required for convenience of the minor, health-care provider or payer." It is unclear as to when *essential* health care would not be "primarily required for the convenience of the minor".

AGO noted the phrase in the new section allowing the minor to consent to services "required to meet the physical, mental and behavioral health needs of the child and but not primarily required for the convenience of the child, provider or payer", although somewhat in conflict with the requirements that the health care be "essential", is similar to the definition of a "medically necessary" abortion referred to by the New Mexico Supreme Court in *New Mexico Right to Choose v. Johnson*, 975 P.2d 841 (1998) when it ruled that the Human Services Department must provide funding for such abortions for Medicaid-eligible women. It is unclear whether inclusion of that phrase is intended to allow certain unemancipated minors to consent to termination of pregnancy.

PERFORMANCE IMPLICATIONS

AOC noted the proposed legislation may have an impact on the following measures of the district courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

DOH noted its providers would need to be able to identify which unemancipated minors 14 or older who have the capacity to consent can access medically necessary health care without parental consent.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

AGO reported Senate Bill 248 as originally introduced enacted a new Section 32A-21-4.1 NMSA 1978 to the Emancipation of Minors Act to allow an unemancipated minor who is fourteen years of age or older and who has the capacity to consent, to give consent for medically necessary health care services under certain conditions. However, that portion of the proposed legislation was stricken by the Senate Public Affairs Committee.

TECHNICAL ISSUES

DOH noted on page 3, lines 17-18, referencing 24-7A-6.1, the proposed legislation deletes paragraph G, which defines "unemancipated minor". While the existing statutory definition is technically incorrect (because an unemancipated minor is not only a person at or under the age of 15, as stated in the existing law, but also one age 16-18 who has not been emancipated by marriage, is not on active duty or has not been emancipated through a court declaration), it should be amended and not deleted. A definition is necessary in order to understand the provisions of the 24-7A-6.1, which address life-sustaining treatment for unemancipated minors.

OTHER SUBSTANTIVE ISSUES

DOH noted the proposed legislation conflicts with 32A-6A-14B of the Children's Mental Health and Developmental Disabilities Act in which a child under 14 years of age may initiate and consent to an initial assessment with a clinician and for medically necessary early intervention service limited to verbal therapy as set forth in the section. Another section of the Children's Mental Health and Developmental Disabilities Act, 32A-6A-15A, states that a child 14 years of age or older is presumed to have capacity to consent to treatment without consent of the child's legal custodian, including consent for individual psychotherapy, group psychotherapy, guidance counseling, case management, behavioral therapy, family therapy, counseling, substance abuse treatment or other forms of verbal treatment that do not include aversive interventions. Under the proposed legislation only those unemancipated minors 14 or older who are living apart from a parent/guardian, or are the parent of a child or are in danger of suffering serious health consequences if health care is not provided and for whom those types of mental, behavioral and substance abuse care are "medically necessary" would be permitted to consent to treatment. Further, 32A-6A-15B states that psychotropic medications may be administered to a child 14 years of age or older with the informed consent of the child and that the clinician shall notify the child's legal custodian. Thus the proposed legislation would allow, when medically necessary and to those who fit the definition, an unemancipated minor 14 or older to receive psychotropic medications without the clinician being obligated to notify the legal custodian.

DOH reported the proposed legislation also conflicts with 24-10-1, which allows any emancipated minor or any minor in a lawful marriage to give consent to the furnishing of hospital, medical and surgical care to such minor, and the consent can't be denied because of minority.

New Mexico law currently allows for any person regardless of age to consent to an examination and treatment by a licensed physician for any sexually transmitted disease (24-1-9). Under the proposed legislation, only those certain unemancipated minors 14 and older would be able to consent for this treatment if it is medically necessary. New Mexico law also allows any person regardless of age to consent to an examination and diagnosis by a licensed physician for pregnancy (24-1-13). As in age-blind treatment for STDs, the proposed legislation would limit this ability to consent for pregnancy exam and diagnosis to only those certain minors. Similarly,

New Mexico law currently allows a female minor to consent to prenatal delivery and postnatal care by a licensed health care provider (24-1-13.1). Again, the proposed legislation would limit those female minors who could access such care to those who meet the required categories.

DOH stated the proposed legislation also conflicts with 24-10-2, which allows any person standing *in loco parentis* to a minor to consent for emergency attention in cases of an emergency in which a minor is in need of immediate hospitalization, medical attention or surgery and the parents cannot be located to give consent. The proposed legislation would allow the unemancipated minor 14 or older to consent him/herself so long as he/she meets the necessary criteria.

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