



Minors' Informed Consent, Confidentiality, and Health Care Decision Making Rights

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I. Purpose

The purpose of this Policy is to identify for UCP's providers and staff the conditions under which:

- Informed consent for health care services should be obtained from a minor, and may be legally obtained from the minor;
- Informed consent for health care services should be obtained from the minor's parent, guardian or a surrogate authorized to consent on behalf of the minor;
- A minor's parent or guardian must be notified when health care services are provided to a minor;
- A minor's parent or guardian may be notified when health care services are provided to a minor;
- A minor's parent or guardian should not be notified when health care services are provided to a minor;
- UCP may disclose a minor's health care information pursuant to the minor's authorization; and
- UCP may disclose a minor's health care information pursuant to a parent's, guardian's or surrogate's authorization

II. Policy

It is the policy of UCP to:

1. Ensure that UCP's providers providing services to a minor clarify to the minor and, if applicable, to the minor's parent(s) or guardian(s), at the outset of the provider-patient relationship, whether the minor or the minor's parent(s) or guardian(s) is responsible for (i) providing informed consent for UCP's services, (ii) paying or arrangement for payment (e.g., through the parent's health insurance coverage) for services provided to the minor, and (iii) authorizing access to and disclosures of the minor's health care information.
2. Obtain informed consent from the person authorized to provide such consent prior to providing health care services to a minor, unless a legal exception to consent

applies, pursuant to the Procedure set forth below. The individual legally authorized to provide consent for health care services on behalf of a minor varies according to the minor's legal status, the type of health care services being provided to the minor, and, in certain circumstances, the age of the minor. UCP providers should identify the individual authorized to provide consent for services on behalf of a minor as indicated in the Procedure below.

3. Honor a minor's right of confidentiality to the extent allowed by law, and to disclose a minor's health care information only when authorized by law or pursuant to an authorization obtained from the person with the legal authority to authorize the disclosure of the minor's health care information as indicated in the Procedure below.

III. Procedure

1. Scope of Policy; Definition of Minor: This Policy and Procedure applies to UCP clients who are minors, *i.e.*, under 18 years of age. See 22 M.R.S. § 1501(3).
2. General Consent Rule for Minors: Generally, minors are presumed to be legally incompetent to provide informed consent for health care services *unless the minor is specifically authorized by law (see Section 3 below) to consent to the health care or services being provided to the minor*. Consequently, *unless otherwise indicated in Section 3 below*, informed consent should be obtained from the minor's parent, guardian, surrogate (see Section 2(C) below), or another authorized decision-maker indicated below, subject to the following requirements, qualifications and limitations:
 - A. Consent Provided by a Legally Separated or Divorced Parent: If the minor's parents are legally separated or divorced and cannot agree, the minor's UCP provider will request a copy of the parents' custody order or divorce decree and will review the specific terms of the order or decree to determine which parent is authorized to provide consent. *If both parents retain shared parental rights and responsibilities under the custody order or divorce decree*, then the minor's UCP provider may rely upon the consent of either parent to provide health care services to the minor, *though consultation with legal counsel is advisable if the other parent objects*.
 - B. Consent Provided by a Guardian: A guardian is authorized to provide consent on behalf of a minor to the extent providing such consent is within the scope of the guardian's authority and powers as set forth in the court order establishing the guardianship for the minor. Where a guardian is acting on behalf of a minor, the minor's UCP provider will request a copy of the guardianship order and will review the order to determine whether the guardian has the particular authority to consent to the health care services in question, and whether the order excludes other rights, such as the right of the minor's parents to access the minor's clinical records or health care information.

C. Consent Provided by a Surrogate: A surrogate (as defined in Section 2(C)(1) below) may give consent for health care for a minor, subject to the following requirements and limitations:

1. The surrogate must be an adult (i) who is not a parent or legal guardian of the minor, (ii) who is related to the minor by blood, marriage or adoption, and (iii) from whom the minor receives the ongoing care and support expected of a parent. A surrogate does not include a person to whom a parent has delegated parental authority to consent to the minor's treatment through a power of attorney or other written instrument. If an adult relative of the minor meeting the above criteria ((i)-(iii)) does not exist, an adult to whom a parent or legal guardian has not delegated parental authority (through a power of attorney or other written instrument) with whom the minor resides and from whom the minor receives the ongoing care and support expected of a parent, can act as a surrogate for the minor.
2. The existence of a surrogate does not does not affect the authority and ability of a minor to give consent as otherwise provided by law and as set forth in Section 3 of this Policy. That is, a surrogate should not be looked to or relied upon for consent except in circumstances where the minor is not authorized to consent or lacks the decisional capacity to provide consent.
3. If parental notification is required under a provision of this Policy (or by an applicable law), before the surrogate can give consent, the surrogate must make a reasonable good faith attempt to inform the minor's parents or legal guardian of the minor's need for health care services and the parents' right to make those decisions. If parental notification is required under this Policy (or by an applicable law), the surrogate giving consent must make a reasonable good faith attempt to inform the minor's parents or legal guardian of the health care that the minor received. A UCP provider who provides health care to a minor pursuant to consent provided by a surrogate must inform the surrogate of the surrogate's legal obligation to notify the minor's parents or legal guardian, by requiring the surrogate to complete and sign the "Attestation of Surrogate's Qualifications and Authority to Make Health Care Decisions for a Minor and Acknowledgement of Surrogate's Obligations" form (**Attachment A**).

D. Foster Parents: Foster parents are typically custodians and caretakers of minors, but do not have the legal authority of a parent, guardian or surrogate to make health care decisions on behalf of a minor in their custody. The State of Maine, acting through the Maine Department of Health and Human Services ("DHHS"), is the legal guardian of minors in foster care. However, foster parents have the legal authority to consent to emergency health care and services on behalf of a foster child. Foster parents have no other legal authority to make health care decisions on behalf of a foster child unless expressly delegated such decision making authority by DHHS. DHHS does, however, often delegate to foster

parents the authority to arrange for foster children's routine health care. In cases where the scope of a foster parent's decision making authority is unclear, UCP providers should contact the foster child's DHHS caseworker for clarification and any required consent, and obtain such clarification or consent in writing.

- E. Stepparents: Stepparents do not have the rights of a parent or guardian to make healthcare decisions on behalf of a minor stepchild in the absence of a valid adoption or other court order expressly granting a stepparent health care decision making authority on behalf of the stepchild. In circumstances where a stepparent asserts decision making authority on behalf of a minor stepchild, the UCP provider will request from the stepparent (i) a copy of the stepparent's adoption order or other court order verifying such authority, or (ii) if the stepparent is qualified to act as a surrogate, a completed, signed copy of the "Attestation of Surrogate's Qualifications and Authority to Make Health Care Decisions for a Minor and Acknowledgement of Surrogate's Obligations" form (**Attachment A**).
 - F. Grandparents: Generally, a grandparent does not have the rights of a parent or guardian to make health care decisions on behalf of a minor grandchild even if the grandchild is in the custody of the grandparent, the grandparent has been awarded legal custody of the child in a child custody or child protective proceeding, or the grandparent has been granted rights of reasonable visitation or access by a court, unless (i) the court order authorizing such legal custody and access expressly grants to the grandparent health care decision making authority on behalf of the minor, or (ii) the grandparent meets the definition of and is acting within the authority of a "surrogate" described below. In circumstances where a grandparent asserts decision making authority on behalf of a minor grandchild, UCP providers will request from the grandparent (as applicable) (i) a copy of the court order verifying the grandparent's decision making authority on behalf of the minor grandchild, or (ii) a completed, signed copy of the "Attestation of Surrogate's Qualifications and Authority to Make Health Care Decisions for a Minor and Acknowledgement of Surrogate's Obligations" form (**Attachment A**).
3. Exceptions to the General Consent Rule for Minors; Circumstances in Which Minor Has Authority to Consent: As indicated in this Policy, certain minors have the same rights as adult patients to consent to health care services. Other minors (also identified below) have a limited right to consent to health care services, depending on the type of services, the circumstances in which the care is provided and, in some instances, upon the age of the minor. *In all cases, the authority of the minor to consent is conditioned upon the minor's decisional capacity (see Section 6).*
- A. Minors Who Have the Same Health Care Decision Making Rights as Adults:
 - 1. The following minors are legally authorized to give consent to *all medical, mental, dental and other health care services*:

- a. Minors who are living separately from their parents or legal guardians and are independent of parental support (see documentation requirements below);
 - b. Minors who are or have been legally married;
 - c. Minors who are or have been members of the U.S. Armed Forces; and
 - d. Minors who have been emancipated by court order.
2. Required Documentation Verifying Minor's Status and Authority: The minor's UCP provider will request from the minor appropriate documentation of the above circumstances before providing services to a minor authorized to consent on the minor's own behalf, as follows:
- a. In the case of a minor living separately and independently of parental support (Section 3(A)(1)(a) above), either:
 - (i) A written statement affirming that the minor is living separately from parents or a legal guardian and is independent of parental support (**Attachment B**, "Statement Affirming Minor's Independent Living Status and Independence from Parental Support" Form) signed by:
 - (1) A director or designee of a governmental or nonprofit agency that receives public or private funding to provide services to homeless persons;
 - (2) A local education agency liaison for homeless children and youth;
 - (3) A school social worker or counselor;
 - (4) An attorney representing the minor in any legal matter;
 - (ii) A copy of a protection from abuse complaint or a temporary order or final order of protection against the minor's parent or legal guardian; or
 - (iii) Proof of filing a petition for emancipation by or on behalf of the minor.
 - b. In the case of a married minor (Section 3(A)(1)(b) above), a copy of the minor's marriage license.

- c. In the case of a minor member of the U.S. Armed Forces (Section 3(A)(1)(c) above), a copy of the minor's Armed Service identification card or other document evidencing former or current membership in the U.S. Armed Forces.
- d. In the case of an emancipated minor (Section 3(A)(1)(d) above), a copy of the court's emancipation order.
- e. In the event the relevant documentation above is not available or cannot be readily obtained, and time is of the essence to ensure the appropriate and timely provision of health care services to a minor, UCP providers will obtain the minor's signature on the "Attestation and Verification of Minor's Authority to Consent to Health Care or Services" form (**Attachment C**).

B. Minors Authorized to Provide Consent for Certain Types of Health Care Services under Certain Circumstances: A minor with decisional capacity is authorized to consent to, and UCP and its providers may rely on, the consent of such a minor to provide certain types of health care services, subject to the following:

- 1. Treatment for a Substance Use Disorder: A minor with decisional capacity is authorized to consent to treatment for a substance use disorder, including:
 - a. Social work services for problems associated with substance use provided by a social worker;
 - b. Treatment for substance use disorder provided by another health care professional when the provision of such treatment is within the scope of licensure and practice of such health care professional.

A health care professional listed above providing treatment to a minor for a substance use disorder is under no obligation to obtain the consent of the minor's parent or guardian, or to inform the minor's parent or guardian of the provision of such treatment.

See 22 M.R.S. §§ 1502, 1823; 32 M.R.S. §§ 2595, 3292, 3817, 6221, 7004.

- 2. Treatment for Emotional or Psychological Problems: A minor with decisional capacity is authorized to consent to treatment (including counseling) for emotional or psychological problems. *See 22 M.R.S. § 1502.*
- 3. Information and Counseling for Decision Making Regarding Pregnancy: A pregnant minor is authorized to consent to receive information and

counseling for decision making regarding pregnancy (including information and counseling regarding birth control, prenatal care, postnatal care, foster care, adoption and abortion) provided by a social worker. *See* 22 M.R.S. § 1597-A.

4. Family Planning Services: A minor with decisional capacity is authorized to consent to receive family planning services from a health care practitioner (i.e., any person licensed, certified or otherwise authorized to provide health care services under Maine law). “Family planning services” means:

- a. Medically safe and effective sexual and reproductive health care and education that enable persons to freely plan their children, avoid unintended pregnancy, and maintain reproductive and sexual health through the provision of:
 - (i) Contraceptive supplies (medically approved drugs, prescriptions, rhythm charts, devices and other items designed to prevent pregnancy through chemical, mechanical, behavioral or other means);
 - (ii) Contraceptive procedures (any medically accepted procedure to prevent pregnancy when performed by or under the direction of a health care practitioner on a requesting and consenting patient) and related counseling;
- b. The prevention and treatment of infertility;
- c. Appropriate prenatal and obstetric care;
- d. The prevention or treatment of sexually transmitted infections; and
- e. Other services necessary for reproductive and sexual health.

A health care practitioner providing family planning services to a minor is under no obligation to obtain the consent of the minor’s parent or guardian, or to inform the parent or guardian of the family planning services prevention or treatment provided to the minor. *See* 22 M.R.S. Ch. 406.

5. Health Care and Services for a Minor Parent’s Own Child: A minor with decisional capacity who is a parent is generally entitled and authorized to provide consent to health care services on behalf of the minor’s own child in the absence of a guardianship, custody order, or other limitation on the minor’s parental rights, even though the minor parent may lack the

authority to consent to the same care or services on behalf of him- or herself.

4. Parental Notification and Minor Confidentiality: The following sections indicate the conditions under which parental notification is required, permitted and prohibited where health care or services are provided to a minor *in reliance upon the minor's consent*.

- A. Circumstances in Which Parental Notification is Prohibited: *Except as noted below in Sections 4(B)(1) and 4(C)*, a minor authorized to consent to health care services is entitled to the same confidentiality afforded to an adult, and a minor's parents should not be notified with respect to health care services provided to the minor unless the minor consents to such notification. *See 22 M.R.S. § 1505(1)*. However, as with an adult, UCP may disclose a minor's health information without the minor's (or a minor's parent's or guardian's authorization) when required or authorized by law.

- B. Circumstances in Which Parental Notification is Permissible But Not Required: A UCP provider who takes reasonable steps to ascertain that a minor is authorized to consent to health care services (as indicated above in Section 3) may rely upon the consent of the minor in rendering such services and is under no obligation to notify or obtain the consent of the minor's parent or guardian prior to providing the services to the minor. However, even where a minor is authorized to consent to care and services without parental consent, parental or guardian notification is permissible in the following circumstance:

1. Parental Notification Necessary to Protect Health of Minor: A UCP provider *may* (but is not required to) notify the parent or guardian of a minor who has sought health care services if, in the judgment of the provider, failure to inform the parent or guardian would seriously jeopardize the health of the minor or would seriously limit the provider's ability to provide services to the minor. *See 22 M.R.S. § 1505(2)*.

- C. Disclosures to Avert a Serious Threat to Health or Safety: A minor's UCP provider may, consistent with applicable law and standards of ethical conduct, disclose a minor's health information to appropriate persons (including but not limited to the minor's parent[s] or guardian[s] and law enforcement) when the provider in good faith believes that the disclosure:

1. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person (including but not limited to the minor or a third-party) or the public, and is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
 2. Is necessary for law enforcement to identify or apprehend an individual:

- a. Because of a statement by an individual admitting participation in a violent crime that UCP or the minor's UCP provider reasonably believes may have caused serious physical harm to the victim; or
- b. Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody (as those terms are defined at 45 C.F.R. § 164.501).

A disclosure made under this Section 4(C) must protect the confidentiality of the minor's health care information consistent with sound professional judgment. *See* 22 M.R.S. § 1711-C(6)(D); 45 C.F.R. § 164.512(j).

5. Uses and Disclosures of Minors' Protected Health Information without Authorization: UCP providers and staff may use and disclose a minor's health information without an authorization from the minor or the minor's parent(s) or guardian(s) only if the use or disclosure is permitted without such authorization under this Policy or UCP's other policies on uses and disclosures of protected health information.
6. Determination of a Minor's Decisional Capacity:
 - A. Where a minor is legally authorized to consent to or to refuse health care services, the minor's UCP provider will assess the minor's decisional capacity in the same manner as decisional capacity is evaluated for an adult, in accordance with applicable professional standards of care.
 - B. A determination of decisional "capacity" means that the minor's UCP provider has determined that the minor has the ability to (i) have a basic understanding of the diagnosed condition, (ii) understand the significant benefits, risks and alternatives to the proposed health care and the consequences of forgoing the proposed treatment, (iii) make and communicate a health care decision, and (iv) (if applicable) understand the consequences of designating an agent or surrogate to make health care decisions on behalf of the minor.
 - C. Generally, a UCP provider may reasonably presume that a minor at least 14 years old has the capacity to provide informed consent in the absence of clinical evidence of incapacity, but should not rely upon the consent or authorization of a minor under 14 years old without formally assessing and ascertaining clinical evidence that the minor has the decisional capacity to provide informed consent. *Consultation with legal counsel may be advisable in particular cases.*
7. Informed Consent: Where a minor is authorized to provide consent for health care services, the minor's UCP provider will obtain informed consent from the minor and document such consent in the same manner as it is obtained and documented for an adult client.

8. Minor's Right to Refuse Health Care and Services: A minor with decisional capacity authorized to consent to a particular type of health care service (as indicated in Section 3 above) is also authorized to make an informed refusal of that same service.
9. Verification and Documentation of Authority of Authorized Representative: Where an authorized representative consents to health care or services on behalf of a minor, the minor's UCP provider will verify and document the legal authority of the person providing consent in the minor's clinical records before allowing the person to assume the duties and responsibilities of an authorized representative. Such documentation will include:
 - A. The representative's name, address, and telephone number;
 - B. The representative's relationship to the minor; and
 - C. The person's legal authority to act as the minor's authorized representative (e.g. parent, guardian, surrogate, etc.).
10. Guidance in Uncertain or Other Circumstances: In the event a UCP provider is uncertain as to who is authorized to consent on behalf of a minor, or to authorize the disclosure of a minor's health information, under this Policy in a specific situation, the provider will notify and consult with a supervisor, who may contact UCP's legal counsel for specific legal guidance on the situation.



Scott Tash, CEO



Date

Attachments

- A: Attestation of Surrogate's Qualifications and Authority to Make Health Care Decisions for a Minor and Acknowledgment of Surrogate's Obligations (Form)
- B: Statement Affirming Minor's Independent Living Status and Independence from Parental Support (Form)
- C: Attestation and Verification of Minor's Authority to Consent to Health Care or Services (Form)

ATTACHMENT A

Attestation of Surrogate's Qualifications and Authority to Make Health Care Decisions for a Minor and Acknowledgment of Surrogate's Obligations

United Cerebral Palsy of Maine
700 Mt. Hope Ave, Suite 320
Bangor, Maine 04401

Minor's Name: _____ Minor's Date of Birth: _____

Minor's Parents or Legal Guardian(s): _____

Under Maine law (22 M.R.S. §§ 1501(4), 1503-A), a person (called a "surrogate") authorized to consent to health care services on behalf of a minor must meet the following qualifications and be informed that he or she has the following legal obligations when acting as a surrogate.

Accordingly, by signing below, I attest to United Cerebral Palsy of Maine ("UCP") that:

Qualifications of a Surrogate

1. I am an adult (at least 18 years old).
2. I am not a parent or legal guardian of the above-named minor.
3. I have not been delegated parental authority to act on behalf of the above-named minor through a power of attorney or other written instrument.
4. The above-named minor resides with me at the following address:
_____.
5. The above-named minor receives from me the ongoing care and support expected of a parent.

6. EITHER (*initial applicable statement*):

_____ (i) I am related to the above-named minor by blood, marriage, or adoption
(*state relationship*: _____); OR

_____ (ii) I am not related to the above-named minor by blood, marriage, or adoption,
but no other person related to the above-named minor by blood, marriage,
or adoption exists who meets all of the qualifications set forth in
Statements 1-6(i) above.

Limitations on Scope of Surrogate's Legal Authority

7. If the above-named minor has the legal authority and decisional capacity under Maine law to consent to health care services on the minor's own behalf, the minor's UCP provider may seek and obtain consent for such care or services from the minor rather than from me.

Surrogate's Notification Obligations

8. Before I give consent for health care services on behalf of the above-named minor, I understand that I have an obligation to make a reasonable good faith attempt to inform the minor's parents or legal guardian of the minor's need for health care and the parents' right to make those decisions, unless such parental notification is not required by law.
9. I understand that in giving consent to health care services on behalf of the above-named minor, I have an obligation to make a reasonable good faith attempt to inform the minor's parents or legal guardian of the health care that the minor received, unless such parental notification is not required by law. I understand that the sending of correspondence by regular mail, e-mail, texting, posting to a personal website or other written means of communication to the last known address, or contacting by telephone using the last known telephone number, of the minor's parents or legal guardian, which means I believe to be the most effective way to ensure actual notification, is deemed a reasonable good faith attempt to provide such written notice to the minor's parents or legal guardian.

Acknowledgement of Legal Prohibitions and Criminal Penalties

10. I understand that a surrogate who makes decisions for a minor knowing that the decisions are prohibited by 22 M.R.S. § 1503-A(1) commits a Class E crime under Maine law (22 M.R.S. § 1503-A(3)(A)).
11. I understand that a surrogate who knowingly acts as a surrogate for a minor without meeting the definition of a "surrogate" in 22 M.R.S. § 1501(4) (i.e., the criteria set forth in Statements 1-6 above), commits a Class E crime under Maine law (22 M.R.S. § 1503-A(3)(B)).

ATTACHMENT B

Statement Affirming Minor's Independent Living Status and Independence from Parental Support

United Cerebral Palsy of Maine

700 Mt. Hope Ave, Suite 320

Bangor, Maine 04401

Minor's Name: _____ Minor's Date of Birth: _____

Minor's Parents or Legal Guardian(s): _____

I, the undersigned, state and affirm to United Cerebral Palsy of Maine ("UCP") and to the above named minor's UCP provider, _____ [Name, Credentials], pursuant to 22 M.R.S. § 1503(1)(A), that the above-named minor is living separately from the minor's parents or a legal guardian and is independent of parental support.

Date: _____

Signature

Printed Name: _____

Title(*required*): _____

Agency/School/Firm: _____

One must be checked: ☐ Director or designee of a governmental or nonprofit agency that receives public or private funding to provide services to homeless persons
☐ Local education agency liaison for homeless children and youth
☐ School social worker
☐ School counselor
☐ Attorney representing minor in a legal matter

Telephone Number: _____

Email Address: _____

12. I understand that a surrogate who fails to attempt to give notice as required under Maine law (22 M.R.S. §§ 1503-A(1)-(2), described in Statements 8-9 above), commits a Class E crime under Maine law (22 M.R.S. § 1503-A(3)(C)).

Date: _____

Surrogate's Signature

Printed Name: _____

Telephone Number: _____

Email Address: _____

ATTACHMENT C

**Attestation and Verification of Minor's Authority
to Consent to Health Care or Services**

22 M.R.S. § 1503

United Cerebral Palsy of Maine

700 Mt. Hope Ave, Suite 320

Bangor, Maine 04401

I, _____ [Minor's Printed Name], do hereby declare and attest under penalty of perjury that I am a minor under the age of 18 years old and (*initial applicable statement(s), at least one of 1-4 must be initialed*):

_____ 1. I am living separately from my parents or a legal guardian, and am independent of parental support.

Also initial only if applicable (however, #1 above can be initialed without either (i) or (ii) below being initialed):

_____ (i) A protection from abuse complaint or temporary order or final order of protection has been issued by a court against my parent(s) or legal guardian.

_____ (ii) A petition for my emancipation has been filed in court by me or on my behalf.

_____ 2. I am or have been legally married.

_____ 3. I am or have been a member of the U.S. Armed Forces.

_____ 4. I have been emancipated by court order.

Date: _____

Minor's Signature

Address: _____

Telephone: _____

Email: _____

Date: _____

Witness's Signature

