STATE OF NEW YORK

9963

IN ASSEMBLY

April 21, 2022

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

AN ACT to amend the public health law, the mental hygiene law, the social services law and the insurance law, in relation to permitting certain minors to consent to health care treatment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2504 of the public health law, as added by chapter 769 of the laws of 1972, subdivision 2 as amended by chapter 119 of the laws of 2005, subdivision 3 as added by chapter 976 of the laws of 1984, subdivision 4 as amended by chapter 623 of the laws of 2019, subdivision 5 as added and subdivision 6 as renumbered by chapter 521 of the laws of 1994, and subdivision 7 as added by chapter 360 of the laws of 2019, is amended to read as follows:

§ 2504. Enabling certain persons to consent for certain medical, dental, health and hospital services. 1. Any person who is eighteen years of age or older, or is the parent of a child or has married, may give effective consent for medical, dental, health and hospital services for [~~himself or herself~~] themself, and the consent of no other person shall be necessary.

(a) Any person, including a minor, who comprehends the need for, the nature of, and the reasonably foreseeable risks and benefits involved in any contemplated medical, dental, health, or hospital service, as well as any alternatives thereto, may give effective consent thereto for themself, and the consent of no other person shall be necessary.

(b) Any runaway youth or homeless youth, as defined in section five hundred thirty-two-a of the executive law, may give effective consent for medical, dental, health and hospital services for themself.

(c) The commissioner may promulgate regulations as reasonably necessary to implement paragraphs (a) and (b) of this subdivision.

2. Any person who has been married or who has borne a child may give effective consent for medical, dental, health and hospital services for his [~~or~~], her, or their child. Any person who has been designated pursuant to title fifteen-A of article five of the general obligations law as

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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a person in parental relation to a child may consent to any medical, dental, health and hospital services for such child for which consent is otherwise required [~~which are not: (a) major medical treatment as defined in subdivision (a) of section 80.03 of the mental hygiene law; (b) electroconvulsive therapy; or (c) the withdrawal or discontinuance of medical treatment which is sustaining life functions~~].

3. Any person who is pregnant may give effective consent for medical, dental, health and hospital services relating to prenatal care.

4. Medical, dental, health and hospital services may be rendered to persons of any age without the consent of a parent, legal guardian or person possessing a lawful order of custody when, in the [~~physician's~~] **practitioner's** judgment an emergency exists and the person is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health.

5. Where not otherwise already authorized by law to do so, any person in a parental relation to a child as defined in section twenty-one hundred sixty-four of this chapter and, [~~(i)~~] **(a)** a grandparent, an adult brother or sister, an adult aunt or uncle, any of whom has assumed care of the child and, [~~(ii)~~] **(b)** an adult who has care of the child and has written authorization to consent from a person in a parental relation to a child as defined in section twenty-one hundred sixty-four of this chapter, may give effective consent for the immunization of a child. However, a person other than one in a parental relation to the child shall not give consent under this subdivision if [~~he or she has~~] **they have** reason to believe that a person in parental relation to the child as defined in section twenty-one hundred sixty-four of this chapter objects to the immunization. **However, a child who may give effective consent under this section may give effective consent to their own immunization, and the consent of no other person shall be necessary.**

6. Anyone who acts in good faith based on the representation by a person that [~~he is~~] **they are** eligible to consent pursuant to the terms of this section shall be deemed to have received effective consent.

7. No person shall perform a pelvic examination or supervise the performance of a pelvic examination on an anesthetized or unconscious patient unless the person performing the pelvic examination is legally authorized to do so and the person supervising the performance of the pelvic examination is legally authorized to do so and:

(a) the patient or the patient's authorized representative gives prior oral or written informed consent specific to the pelvic examination;

(b) the performance of a pelvic examination is within the scope of care for the surgical procedure or diagnostic examination scheduled to be performed on the patient and to which the patient has already given oral or written consent; or

(c) the patient is unconscious and the pelvic examination is medically necessary for diagnostic or treatment purposes, and the patient is in immediate need of medical attention and an attempt to secure consent would result in a delay of treatment which would increase the risk to the patient's life or health.

Nothing in this subdivision diminishes any other requirement to obtain informed consent for a pelvic examination or any other procedure.

§ 2. Subdivision (a) of section 9.13 of the mental hygiene law, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

(a) The director of any hospital may receive as a voluntary patient any suitable person in need of care and treatment, who voluntarily makes

written application therefor. If the person is under sixteen years of age, the person may be received as a voluntary patient [~~only~~] on the application of the parent, legal guardian, or next-of-kin of such person[~~, or,~~]; subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or authorized agency with care and custody of such person pursuant to the social services law, the director of the division for youth, acting in accordance with section five hundred nine of the executive law, or a person or entity having custody of the person pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act**; or on their own application, if they may give effective consent under section two thousand five hundred four of the public health law**. If the person is over sixteen and under eighteen years of age, the director may, in [~~his~~] **their** discretion, admit such person either as a voluntary patient on [~~his~~] **their** own application or on the application of the person's parent, legal guardian, next-of-kin, or, subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or authorized agency with care and custody of such person pursuant to the social services law, the director of the division for youth, acting in accordance with section five hundred nine of the executive law, provided that such person knowingly and voluntarily consented to such application in accordance with such section, or a person or entity having custody of the person pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act.

§ 3. Subdivisions (b) and (c) of section 22.11 of the mental hygiene law, as added by chapter 558 of the laws of 1999, are amended to read as follows:

(b) In treating a minor for chemical dependence on an inpatient, residential, or outpatient basis, the important role of the parents or guardians shall be recognized. Steps shall be taken to involve the parents or guardians in the course of treatment, and consent from such a person for inpatient, residential, or outpatient treatment for minors shall be required, except as otherwise provided by subdivision (c) of this section **or section two thousand five hundred four of the public health law**.

(c) Minors admitted for inpatient, residential or outpatient treatment without parental or guardian involvement.

1. If, in the judgment of a [~~physician~~] **qualified health professional**, parental or guardian involvement and consent would have a detrimental effect on the course of treatment of a minor who is voluntarily seeking treatment for chemical dependence or if a parent or guardian refuses to consent to such treatment and the [~~physician~~] **qualified health professional** believes that such treatment is necessary for the best interests of the child, such treatment may be provided to the minor by a [~~licensed physician~~] **qualified health professional** on an inpatient, residential or outpatient basis, a staff [~~physician~~] **health professional** in a hospital, or persons operating under their supervision, without the consent or involvement of the parent or guardian. Such [~~physician~~] **qualified health professional** shall fully document the reasons why the requirements of subdivision (b) of this section were dispensed within the minor's medical record[~~, provided, however, that for providers of services which are not required to include physicians on staff, pursuant to regulations promulgated by the commissioner, a qualified health professional, as~~

~~defined in such regulations, shall fulfill the role of a physician for purposes of this paragraph~~].

2. If the provider of services cannot locate the parents or guardians of a minor seeking treatment for chemical dependence after employing reasonable measures to do so, or if such parents or guardians refuse or fail to communicate with the provider of services within a reasonable time regarding the minor's treatment, the program director may authorize that such minor be treated on an inpatient, residential or outpatient basis by the provider of services without the consent or involvement of the parent or guardian. Such program director shall fully document the reasons why the requirements of subdivision (b) of this section were dispensed within the minor's medical record, including an explanation of all efforts employed to attempt to contact such parents or guardians.

3. **If the minor may give effective consent under section two thousand five hundred four of the public health law, such treatment may be provided to the minor by a qualified health professional on an inpatient, residential or outpatient basis, a staff health professional in a hospital, or persons operating under their supervision, without the consent or involvement of the parent or guardian.**

4. Admission and discharge for inpatient or residential treatment shall be made in accordance with subdivision (d) of this section.

§ 4. Section 33.21 of the mental hygiene law, as added by chapter 790 of the laws of 1983, subdivisions (a), (b) and (c) as amended and subdivision (e) as added by chapter 461 of the laws of 1994, is amended to read as follows:

§ 33.21 Consent for mental health treatment of minors.

(a) For the purposes of this section:

(1) "minor" shall mean a person under eighteen years of age, but shall not include a person who is the parent of a child, emancipated, has married or is on voluntary status on [~~his or her~~] **their** own application pursuant to section 9.13 of this chapter;

(2) "mental health practitioner" shall mean a physician, a licensed psychologist, or persons providing **mental health** services under the supervision of a physician in a facility operated or licensed by the office of mental health **or providing outpatient mental health services**;

(3) "outpatient mental health services" shall mean [~~those services provided in an outpatient program licensed or operated pursuant to the regulations of the commissioner of~~] mental health **services provided to a person that occur in a community location and/or in an ambulatory care setting such as a mental health center or substance use disorder clinic, hospital outpatient department, community health center, or practitioner's office, or via telehealth. The services may also be provided at a person's home or school. Treatment at this level can include psychotherapy and/or medication management. These services can be delivered in an individual, family, or group setting**;

(4) "reasonably available" shall mean a parent or guardian can be contacted with diligent efforts by a mental health practitioner; and

(5) "capacity" shall mean the minor's ability to understand and appreciate the nature and consequences of the proposed treatment, including the benefits and risks of, and alternatives to, such proposed treatment, and to reach an informed decision.

(b) In providing outpatient mental health services to a minor, [~~or psychotropic medications to a minor residing in a hospital,~~] the important role of the parents or guardians shall be recognized. As clinically appropriate, steps shall be taken to actively involve the parents or guardians, and the consent of such persons shall be required for such

treatment in non-emergency situations, except as provided in subdivisions (c), (d) and (e) of this section or section two thousand five hundred four of the public health law.

(c) A mental health practitioner may provide outpatient mental health services[~~, other than those treatments and procedures for which consent is specifically required by section 33.03 of this article,~~] to a minor voluntarily seeking such services without parental or guardian consent if the mental health practitioner determines that:

(1) **the minor may give effective consent under section two thousand five hundred four of the public health law; or**

(2) the minor is knowingly and voluntarily seeking such services; and

[~~(2)~~] **(3)** provision of such services is clinically indicated and necessary to the minor's well-being; and

[~~(3)~~] **(4)** (i) a parent or guardian is not reasonably available; or

(ii) requiring parental or guardian consent or involvement would have a detrimental effect on the course of outpatient treatment; or

(iii) a parent or guardian has refused to give such consent and a [~~physician~~] **practitioner** determines that treatment is necessary and in the best interests of the minor.

The mental health practitioner shall fully document the reasons for [~~his or her~~] **their** determinations. Such documentation shall be included in the minor's clinical record, along with a written statement signed by the minor indicating that [~~he or she is~~] **they are** voluntarily seeking services. As clinically appropriate, notice of a determination made pursuant to subparagraph (iii) of paragraph [~~three~~] **four** of this subdivision shall be provided to the parent or guardian.

(d) A mental health practitioner may provide a minor voluntarily seeking outpatient services an initial interview without parental or guardian consent or involvement to determine whether the criteria of subdivision (c) of this section are present.

(e) (1) Subject to the regulations of the commissioner of mental health governing the patient's right to object to treatment, subdivision (b) of this section and paragraph two of this subdivision, the consent of a parent or guardian or the authorization of a court shall be required for the non-emergency administration of psychotropic medications to a minor residing in a hospital **unless the minor may give effective consent under section two thousand five hundred four of the public health law**.

(2) A minor [~~sixteen years of age or older~~] who consents may be administered psychotropic medications without the consent of a parent or guardian or the authorization of a court where[~~:~~

~~(i) a parent or guardian is not reasonably available, provided the treating physician determines that (A) the minor has capacity; and (B) such medications are in the minor's best interests; or~~

~~(ii) requiring consent of a parent or guardian would have a detrimental effect on the minor, provided the treating physician and a second physician who specializes in psychiatry and is not an employee of the hospital determine that (A) such detrimental effect would occur; (B) the minor has capacity; and (C) such medications are in the minor's best interests; or~~

~~(iii) the parent or guardian has refused to give such consent, provided the treating physician and a second physician who specializes in psychiatry and is not an employee of the hospital determine that (A) the minor has capacity; and (B) such medications are in the minor's best interests. Notice of the decision to administer psychotropic medications pursuant to this subparagraph shall be provided to the parent or guardi-~~

~~an~~] **the minor may give effective consent under section two thousand five hundred four of the public health law**.

(3) The reasons for an exception authorized pursuant to paragraph two of this subdivision shall be fully documented and such documentation shall be included in the minor's clinical record.

§ 5. Subdivision 8 of section 372 of the social services law, as amended by chapter 684 of the laws of 1996, is amended to read as follows:

8. In any case where a child is to be placed with or discharged to a relative or other person legally responsible pursuant to section ten hundred seventeen or ten hundred fifty-five of the family court act, such relative or other person shall be provided with such information by an authorized agency as is provided to foster parents pursuant to this section and applicable regulations of the department**; provided, however, that no information about any medical, dental, health, or hospital service a child has consented to themself shall be included without the child's authorization. A child may consent to disclosure generally or only in an emergency or may withhold consent all together**.

§ 6. Section 373-a of the social services law, as amended by chapter 305 of the laws of 2008, is amended to read as follows:

§ 373-a. Medical histories. Notwithstanding any other provision of law to the contrary, to the extent they are available, the medical histories of a child legally freed for adoption or of a child to be placed in foster care and of [~~his or her~~] **their** birth parents, with information identifying such birth parents eliminated, shall be provided by an authorized agency to such child's prospective adoptive parent or foster parent and upon request to the adoptive parent or foster parent when such child has been adopted or placed in foster care**; provided, however, that no information about any medical, dental, health, or hospital service a child has consented to themself shall be included without the child's authorization. A child may consent to disclosure generally or only in an emergency or may withhold consent all together**. To the extent they are available, the medical histories of a child in foster care and of [~~his or her~~] **their** birth parents shall be provided by an authorized agency to such child when discharged to [~~his or her~~] **their** own care and upon request to any adopted former foster child; provided, however, medical histories of birth parents shall be provided to an adoptee with information identifying such birth parents eliminated. Such medical histories shall include all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during pregnancy by the child's birth mother and any other information, including any psychological information in the case of a child legally freed for adoption or when such child has been adopted, or in the case of a child to be placed in foster care or placed in foster care which may be a factor influencing the child's present or future health. The department shall promulgate and may alter or amend regulations governing the release of medical histories pursuant to this section.

§ 7. The social services law is amended by adding a new section 373-b to read as follows:

§ 373-b. Reproductive and sexual health care services and information. 1. Each foster parent must be advised, in writing, initially and annually thereafter, of the availability of social, educational and medical reproductive and sexual health care services and information by means of a letter or brochure designed for this purpose.

2. An authorized agency as defined in this title shall offer age and developmentally appropriate reproductive and sexual health care services

and information to all foster children who are or may be sexually active or who request such services or information through the agency's case-worker contact and as part of the comprehensive service plan for each child. Such an offer may be made orally to the child as long as it is also made in writing, by means of a letter or brochure designed for this purpose. If such a plan is developed by a social services district, the district must continue to monitor the particular agency's program implementation, to ensure that the offer is being made in writing and that requested services are provided within thirty days, and to require and collect reports and data from the agency.

3. Services and information offered under this section must be respectful and inclusive of all foster children regardless of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, or gender as defined in section eleven of the education law.

§ 8. Paragraph (c) of subdivision 1 of section 366 of the social services law is amended by adding a new subparagraph 11 to read as follows:

(11) A minor who is not otherwise eligible for medical assistance under this section who consents to their own medical, dental, health and hospital services under subdivision two or three of section two thousand five hundred four of the public health law is eligible for standard coverage only for the specific services consented to; provided that this subparagraph only applies if the minor is unable to use another source of health insurance to pay for the services consented to. The commissioner of health shall promulgate such regulations as may be necessary to carry out the provisions of this subparagraph.

§ 9. Section 17 of the public health law, as amended by section 165 of the laws of 1991, the first undesignated paragraph as amended by chapter 322 of the laws of 2017, is amended to read as follows:

§ 17. Release of medical records. Upon the written request of any competent patient, parent or guardian of an infant, a guardian appointed pursuant to article eighty-one of the mental hygiene law, or conservator of a conservatee, an examining, consulting or treating physician or hospital must release and deliver, exclusive of personal notes of the said physician or hospital, copies of all x-rays, medical records and test records including all laboratory tests regarding that patient to any other designated physician or hospital provided, however, that such records concerning the treatment of an infant patient for venereal disease [~~or~~], the performance of an abortion operation upon such infant patient, or any medical, dental, health and hospital services that the infant patient has consented to themself under section two thousand five hundred four of this chapter shall not be released or in any manner be made available to the parent or guardian of such infant[~~,~~]; provided further that any infant patient who may give effective consent under section two thousand five hundred four of this chapter may request release of their own records and the request of no other person shall be necessary; and provided, further, that original mammograms, rather than copies thereof, shall be released and delivered. Either the physician or hospital incurring the expense of providing copies of x-rays, medical records and test records including all laboratory tests pursuant to the provisions of this section may impose a reasonable charge to be paid by the person requesting the release and deliverance of such records as reimbursement for such expenses, provided, however, that the physician or hospital may not impose a charge for copying an original mammogram when the original has been released or delivered to any competent

patient, parent or guardian of an infant, a guardian appointed pursuant to article eighty-one of the mental hygiene law, or a conservator of a conservatee and provided, further, that any charge for delivering an original mammogram pursuant to this section shall not exceed the documented costs associated therewith. However, the reasonable charge for paper copies shall not exceed seventy-five cents per page. A release of records under this section shall not be denied solely because of inability to pay. No charge may be imposed under this section for providing, releasing, or delivering medical records or copies of medical records where requested for the purpose of supporting an application, claim or appeal for any government benefit or program, provided that, where a provider maintains medical records in electronic form, it shall provide the copy in either electronic or paper form, as required by the government benefit or program, or at the patient's request.

§ 10. Paragraph (c) of subdivision 3 of section 18 of the public health law, as added by chapter 497 of the laws of 1986, is amended to read as follows:

(c) A subject [~~over the age of twelve years may~~] **shall** be notified of any request by a qualified person to review [~~his/her~~] **their** patient information, and, if the subject objects to disclosure, the provider may deny the request. In the case of a facility, the treating practitioner shall be consulted. **In no event may a provider disclose information about any medical, dental, health, or hospital service an infant has consented to themself to the infant's parent or guardian without the infant's authorization. An infant may consent to disclosure to their parent or guardian generally or only in an emergency or may withhold consent all together. An infant who may give effective consent to medical, dental, health, or hospital services under section two thousand five hundred four of this chapter may also give effective consent to release their patient information to any person.**

§ 11. Paragraph 2 of subdivision (c) of section 33.16 of the mental hygiene law, as added by chapter 498 of the laws of 1986, is amended to read as follows:

2. A patient or client [~~over the age of twelve may~~] **shall** be notified of any request by a qualified person to review [~~his/her~~] **their** record and if the patient or client objects to disclosure, the facility, in consultation with the treating practitioner may deny the request. **In no event may a facility, practitioner, or treating practitioner disclose clinical records pertaining to treatment an infant patient or client consented to themself to the infant's parent or guardian without the minor's authorization. An infant patient or client may consent to disclosure to their parent or guardian generally or only in an emergency or may withhold consent all together. An infant who may give effective consent to a medical, dental, health, or hospital service under section two thousand five hundred four of the public health law may also give effective consent to release their clinical record to any person.**

§ 12. Section 3244 of the insurance law is amended by adding a new subsection (f) to read as follows:

(f) (1) An insurer, including health maintenance organizations operating under article forty-four of the public health law or article forty-three of this chapter and any other corporation operating under article forty-three of this chapter shall take the following steps to protect the confidentiality of an insured's, including a subscriber's or enrollee's, medical information:

(i) Insurers shall permit an insured who consents to their own medical, dental, health and hospital services under subdivision two or

three of section two thousand five hundred four of the public health law to choose a method of receiving explanation of benefits forms that contain information relating to the receipt of the specific services consented to, which shall include, but not be limited to, the following: sending the form to the address of the subscriber; sending the form to the address of the insured; sending the form to an alternate address designated by the insured; or sending the form through electronic means when available. When an insured has submitted a request for receiving explanation of benefits forms under this section an insurer is thereby prohibited from sending duplicative explanation of benefits forms to a non-specified recipient or in a manner inconsistent with the request of the insured; and

(ii) Insurers shall not in any way identify the diagnosis or services received as relates to medical, dental, health and hospital services under subdivision two or three of section two thousand five hundred four of the public health in an explanation of benefits forms or in any online portal that allows subscribers to access claim information.

(2) The department shall develop and make available a standardized form for an insured to use to request confidential communications that shall be accepted by all insurers.

(3) For the purposes of this section, an alternative communications request as described in subparagraph (i) of paragraph one of this subsection shall be implemented by an insurer within seven calendar days of receipt of an electronic transmission or telephonic request or within fourteen calendar days of receipt by first-class mail. An insurer shall acknowledge receipt of the alternative communications request and advise the insured of the status of implementation of the request if the insured contacts the insurer.

(4) An insurer shall not condition enrollment or coverage on the waiver of rights provided in this subsection.

(5) This subsection may not be construed to limit acceptance by an insurer of any other form of written request from an insured for confidential communications from a carrier under 45 C.F.R. § 164.522(B).

§ 13. Paragraph (c) and subparagraph (vi) of paragraph (d) of subdivision 8 and subdivision 10 of section 2168 of the public health law, paragraph (c) of subdivision 8 as amended by chapter 420 of the laws of 2014, subparagraph (vi) of paragraph (d) of subdivision 8 as amended by chapter 154 of the laws of 2013, and subdivision 10 as amended by section 7 of part A of chapter 58 of the laws of 2009, are amended to read as follows:

(c) health care providers and their designees, registered professional nurses, and pharmacists authorized to administer immunizations pursuant to subdivision two of section sixty-eight hundred one of the education law shall have access to the statewide immunization information system and the blood lead information in such system only for purposes of submission of information about vaccinations received by a specific registrant, determination of the immunization status of a specific registrant, determination of the blood lead testing status of a specific registrant, submission of the results from a blood lead analysis of a sample obtained from a specific registrant in accordance with paragraph (h) of subdivision two of this section, review of practice coverage, generation of reminder notices, quality improvement and accountability and printing a copy of the immunization or lead testing record for the registrant's medical record, for the registrant's parent or guardian, or other person in parental or custodial relation to a child, or for a registrant [~~upon reaching eighteen years of age~~]; provided, however,

that any immunization record printed for a registrant's parent, guardian, or other person in a custodial relation to a child shall exclude information about any immunization a registrant has consented to themself.

(vi) commissioners of local social services districts with regard to a child in [~~his/her~~] **their** legal custody;

10. The person to whom any immunization record relates, or [~~his or her~~] **their** parent, or guardian, or other person in parental or custodial relation to such person may request a copy of an immunization or lead testing record from the registrant's healthcare provider, the statewide immunization information system or the citywide immunization registry according to procedures established by the commissioner or, in the case of the citywide immunization registry, by the city of New York commissioner of the department of health and mental hygiene**; provided however that any immunization record provided to the person's parent or guardian or other person in a parental or custodial relation to such person shall exclude information about any immunization the person has consented to themself**.

§ 14. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.