



FAQ on Consent for the Treatment and Care of a Minor

Before age 18, an individual is a Minor, unless they are legal emancipated or married. The general rule is that a Parent or Legal Guardian must consent to medical, dental, behavioral health, or substance use disorder treatment for a Minor. But there are exceptions and limitations.

Who may consent to the care or treatment of a Minor?

1. **A Parent, who has not lost legal custody.** A Minor's Parent, as shown on a birth certificate or similar document, may consent for care, unless the Parent has lost legal custody of the Minor.

How can you tell if a Parent has lost legal custody? If divorced or unmarried, a Parent may jointly or individually have legal custody of a Minor. Legal custody is the right to make major life decisions for the Minor, including decisions relating to health care. A Parent who does not have legal custody, does not have the right to seek care for the Minor, except in emergency situations. Loss of legal custody is documented in a court order.

2. **A Legal Guardian authorized by the Court to make health care decisions.** A Legal Guardian may be appointed by the Court and authorized to make health care decisions for a child. But not all Legal Guardians may make health care decisions and sometimes authority is limited to certain types of care, so read the court order carefully.

Can OCS consent for a Minor who is in their custody? Only with a court order or other authorization to obtain care for the Minor. When a Minor is committed to OCS custody, a court order usually authorizes OCS to seek routine medical care for the Minor and sometimes for additional types of care.

Can a Foster Parent consent for a Minor who is placed in their care? Only if the Foster Parent has written authorization to obtain care for the Minor. OCS may authorize a Foster Parent to obtain certain types of care for a Minor using a "Consent for Emergency and Routine Medical Care Form." Without this authorization, a Foster Parent does not have the right to obtain non-emergency care. Also, a Foster Parent may not consent to major medical care.

Can a Court-Appointed Legal Guardian consent for major medical treatment? No, except in emergency situations. Alaska law requires parental consent for a major medical or dental treatment, even where a parent has lost custody, as long as parental rights have not been terminated. Common examples of major medical treatment are dental anesthesia, surgery, or placement of ear tubes. Major medical treatment also includes administration of, or change to a prescription for, medication used to treat a mental health disorder (including psychotropic medication such as: antipsychotics, antidepressants, CNS stimulants and non-stimulant therapies for hyperactivity disorders or sleep disorders; mood stabilizers (including lithium); anticonvulsants; and barbiturates, benzodiazepines, and other miscellaneous central nervous system depressants.)

3. **A Special Power of Attorney.** A Parent/Legal Guardian may delegate authority to make medical decisions for a Minor to another person for up to one year, with a "Delegation of Powers by Parent



or Guardian” form, a healthcare Power of Attorney for the Minor, or other similar written authorization. The form may limit this authority (e.g. routine care only) and may be cancelled by either the parent or the authorized person before the end of the year.

Where can a Parent get a form to use? The “Statutory Form for Power of Attorney to Delegate the Powers of a Parent or Guardian” is available online: <http://doa.alaska.gov/opa/pdfs/Delegation.pdf>

- 4. A Minor may consent to care in some situations.** A Minor who is emancipated is treated as an adult who is able to consent to care, as is a Minor who is married or has been married. Minors who are not legally emancipated may consent under the following circumstances:
- The Minor is living apart from the Minor's Parents or Legal Guardian and is managing the Minor's own financial affairs, regardless of the source or extent of the Minor's income.
 - The Parent or Legal Guardian of the Minor cannot be contacted or, if contacted, is unwilling either to grant or withhold consent. ANTHC should attempt to contact the Minor's Parents prior to treatment, and document such attempt, but if the Parent is unreachable or unwilling to give or withhold consent, ANTHC can proceed to treat the Minor.
 - The Minor is seeking diagnosis, prevention, or treatment of reproductive health issues, a pregnancy or a sexually transmitted disease. This includes abortion related decisions.
 - A Minor who is a parent of a child may give consent to care for his/herself and his/her child.
 - A Minor may consent for referral for counseling and/or drug and alcohol treatment without the Parent or Legal Guardian being present at that visit; however, parental or guardian consent must be obtained prior to provision of these services.

How can I be sure that the Minor is really living apart from his or her parents? Alaska law states that a provider may in good faith rely on representations of the Minor that one of the above provisions apply to allow Minor's consent to care. Providers should use their professional judgment in counseling the Minor and determining what kind of care to provide the Minor, and carefully document their reasoning.

What effect does a Minor's consent have on privacy? A Minor controls the privacy of records related to the care that the Minor consented to on his/her own behalf. Parents/Legal Guardians do not have a right to see these medical records. A billing hold is put on care related to these records to prevent the Parent from learning about the care through their insurance coverage.

Where can I find the documents that are mentioned, like the court orders and power of attorney form? View in Powerchart by clicking the “Notes” menu item and selecting “Legal Documents”.

Where can I get additional information about consent for the treatment of a Minor? In the “ANMC Consents or Refusal for Operations, Procedures, Anesthesia and Blood Transfusions Procedure #101-10.” The Legal Department or Ethics and Compliance Department are also available for questions.