

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Alexander R. Deanda, on behalf of
himself and others similarly situated,

Plaintiff,

v.

Alex M. Azar II, in his official capacity
as Secretary of Health and Human
Services; **Diane Foley**, in her official
capacity as Deputy Assistant Secretary for
Population Affairs; **United States of
America**,

Defendants.

Case No. 2:20-cv-00092

COMPLAINT—CLASS ACTION

Parents have a constitutional right to direct the upbringing of their children. And the Religious Freedom Restoration Act prevents the government from interfering with the ability of parents to raise their children in accordance with their own religious values. The federal government, however, is subverting these constitutional and statutory rights in its Title X program, which funds projects that distribute contraception and family-planning services to minors without parental notification or consent—and in violation of Texas statutes that require parental consent before dispensing prescription contraception to minors. Plaintiff Alexander R. Deanda and his proposed classes sue to enjoin the defendants from funding Title X projects that provide contraception or other family-planning services to minors without parental consent.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

2. Venue is proper because a substantial part of the events giving rise to the claims occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

PARTIES

3. Plaintiff Alexander R. Deanda resides in Randall County, Texas.

4. Defendant Alex M. Azar II is the U.S. Secretary of Health and Human Services. His office is located at 200 Independence Avenue SW, Washington, D.C. 20201. Secretary Azar is sued in his official capacity.

5. Defendant Diane Foley is the Deputy Assistant Secretary for Population Affairs in the Department of Health and Human Services. Dr. Foley directs the Office of Population Affairs in the Department of Health and Human Services, which administers the Title X program. Dr. Foley is sued in her official capacity.

6. Defendant United States of America is the federal government of the United States of America.

TEXAS PARENTAL-CONSENT LAWS

7. The law of Texas gives parents the right to consent to their child's medical and dental care, and psychiatric, psychological, and surgical treatment. *See* Tex. Family Code § 151.001(6) (attached as Exhibit 1).

8. The law of Texas establishes some exceptions to this rule. In certain emergency situations in which the parent cannot be contacted, a non-parent may consent to a child's medical, dental, psychological, and surgical treatment. *See* Tex. Family Code § 32.001 (attached as Exhibit 2). And some children may consent to their own medical, dental, psychological, and surgical treatment in certain limited situations. *See* Tex. Family Code § 32.003 (attached as Exhibit 2). For example, minors on active military duty may consent to their own medical, dental, psychological, and surgical treatment without parental involvement. *See* Tex. Family Code § 32.003(1) (attached

as Exhibit 2). So may emancipated minors who are over 16 years of age. *See* Tex. Family Code § 32.003(2) (attached as Exhibit 2).

9. But outside of these statutory exceptions in section 32.003, there is no provision of Texas law that allows children to receive prescription contraception without parental consent, and the rule of parental consent in section 151.001(6) of the Texas Family Code remains fully applicable to the distribution of prescription contraception by any person or entity in the state of Texas.

10. Any Title X project that distributes prescription contraception to minors without parental consent is therefore acting in violation of Texas law, unless the minor falls within the exceptions listed in chapter 32 of the Texas Family Code.

THE TITLE X PROGRAM

11. The Title X program authorizes the Secretary of Health and Human Services to award grants and contracts to entities that provide family-planning services. *See* 42 U.S.C. §§ 300 et seq.

12. Nothing in the Title X statute authorizes or requires the recipients of Title X funds to dispense family-planning services to minors without parental consent, and nothing in the Title X statute purports to preempt the Texas laws that require parental consent before minors can receive prescription contraception.

13. Instead, the statute requires recipients of Title X funds to “encourage family participation in projects assisted,” and to do so “to the extent practical.” 42 U.S.C. § 300(a). The full text of section 300(a) provides:

The Secretary is authorized to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). To the extent practical, entities which receive grants or contracts under this subsection shall encourage family participation in projects assisted under this subsection.

42 U.S.C. § 300(a).

14. This statutory language establishes a *floor* for Title X funding recipients: Every recipient of a Title X grant or contract must, “to the extent practical . . . encourage family participation” in Title X projects. An entity that fails to “encourage family participation” in Title X projects is categorically eligible to receive a Title X grant or contract, and the Secretary violates the Title X statute if he provides grants or contracts to such an entity.

15. But nothing in this statutory language prohibits Title X funding recipients from going *beyond* a mere policy of “encouraging family participation,” and nothing in the statute prevents Title X projects from establishing a categorical policy of notifying or seeking consent from parents before dispensing prescription contraception or other family-planning services to minors.

16. More importantly, there is nothing in 42 U.S.C. § 300(a) that purports to preempt or override state or federal laws that require more extensive parental involvement, and there is nothing in 42 U.S.C. § 300(a) that purports to exempt Title X projects from those laws. *See Maryland v. Louisiana*, 451 U.S. 725, 746 (1981) (“Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law.”).

17. Finally, the Supreme Court has long held that conditions on the receipt of federal funds must be spelled out in clear and unambiguous language. *See Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (“[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously.”); *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (same); *Will v. Michigan Dep’t of Police*, 491 U.S. 58, 65 (1989) (“Congress should make its intention ‘clear and manifest’ . . . if it intends to impose a condition on the grant of federal moneys” (citation omitted); *see also NFIB v. Sebelius*, 567 U.S. 519, 576–77 (2012) (opinion of Roberts, C.J., joined by Breyer and Kagan, JJ.); *id.* at 676 (Scalia, Kennedy, Thomas, and Alito,

JJ., dissenting). Because Title X is an exercise of the federal spending power, there must be a clear and unambiguous statement that participating States are forbidden to enforce their parental-involvement laws against Title X projects before the Texas laws can be deemed “preempted” by the Title X statute.

18. Nevertheless, the defendants have funded and continue to fund Title X projects in Texas that do not seek or obtain parental consent before dispensing prescription contraception and other family-planning services to unemancipated minors, apparently on the assumption that Title X projects need not comply with state parental-consent laws.

ALLEGATIONS RELATED TO ARTICLE III STANDING

19. Plaintiff Alexander R. Deanda is a father of three daughters under the age of 18.

20. Mr. Deanda is a Christian, and he is raising each of his daughters in accordance with Christian teaching on matters of sexuality, which requires unmarried children to practice abstinence and refrain from sexual intercourse until marriage.

21. Mr. Deanda wishes to be informed if any of his children are accessing or attempting to access prescription contraception and other family-planning services. And he does not want his children to obtain or use these drugs or services unless he consents, in accordance with his statutory rights as a parent under section 151.001(6) of the Texas Family Code.

22. The law of Texas protects Mr. Deanda’s rights as a parent—and the rights of every other parent in Texas—by prohibiting individuals or entities from distributing prescription contraception to minors without parental consent. *See* Tex. Family Code § 151.001(6); Tex. Family Code § 32.003.

23. The defendants, however, are flouting the law of Texas by making prescription contraception (and other family-planning services) available to Mr. Deanda’s

daughters and the children of every other parent in Texas, without their knowledge or involvement.

24. By administering a federal program that offers prescription contraception and other family-planning services to children, and by enabling children to obtain these drugs and services without parental consent, the defendants are inflicting injury in fact on Mr. Deanda and every parent in the United States who wishes to be informed if their children are accessing or attempting to access prescription contraception and other family-planning services, or who wishes to prevent their children from obtaining or using these drugs or services without their consent. These injuries include, but are not limited to: (a) The loss of their statutory rights as parents under 151.001(6) of the Texas Family Code, as they no longer have the right secured by Texas law to consent before their children use or obtain prescription contraception; (b) The subversion of their authority as parents, as their children now have the ability to use or obtain prescription contraception or other family-planning services behind their backs and without parental knowledge or permission; (c) The loss of assurance that their children will be unable to access prescription contraception or other family-planning services that facilitate sexual promiscuity and pre-marital sex; and (d) the weakening of their ability to raise their children in accordance with the teachings of the Christian faith, which prohibits pre-marital sexual activity regardless of whether contraception or family-planning devices are used.

25. Each of these injuries is traceable to the defendants' administration of the Title X program, which distributes prescription contraception or other family-planning services to minors without parental consent, and in violation of Texas laws that require parental consent before prescription contraception is dispensed to minors.

26. Each of these injuries is likely to be redressed by the requested relief, which will enjoin the defendants from directly or indirectly funding any family-planning projects that fail to obtain parental consent before distributing family-planning services to minors, or that violate a state's parental-involvement laws in any manner.

**CLAIM NO. 1—THE DEFENDANTS' ADMINISTRATION OF
THE TITLE X PROGRAM VIOLATES SECTION 151.001(6) OF
THE TEXAS FAMILY CODE**

27. Texas law prohibits individuals and entities from distributing prescription contraception to minors without first obtaining parental consent, subject to limited exceptions. *See* Tex. Family Code § 151.001(6); Tex. Family Code § 32.003.

28. The defendants' administration of the Title X program violates Texas law by funding projects that refuse to comply with section 151.001(6) of the Texas Family Code.

29. Nothing in 42 U.S.C. § 300(a) or any other provision of federal law preempts the Texas statutes that require parental consent to a child's medical, dental, psychological, and surgical treatment. *See* paragraphs 12–16.

30. The Court should therefore declare that section 151.001(6) of the Texas Family Code remains valid and enforceable against those who administer the Title X program in Texas, and that nothing in the Title X statute or any other provision of federal law preempts section 151.001(6) of the Texas Family Code in whole or in part.

31. The Court should also enjoin the defendants from directly or indirectly funding any family-planning project in Texas that fails to comply with section 151.001(6) of the Texas Family Code, or from awarding grants or entering into contracts with any entity that assists a family-planning project in Texas that fails to comply with section 151.001(6) of the Texas Family Code.

32. Mr. Deanda brings this claim on behalf of every parent in Texas who wishes to be informed if their children are accessing or attempting to access prescription contraception, or who wishes to prevent their children from obtaining or using these drugs without their consent.

**CLAIM NO. 2—THE DEFENDANTS’ ADMINISTRATION OF
THE TITLE X PROGRAM VIOLATES THE CONSTITUTIONAL
RIGHT OF PARENTS TO DIRECT THE UPBRINGING OF
THEIR CHILDREN**

33. Parents have a constitutional right to direct the upbringing of their children. *See Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

34. The defendants’ administration of the Title X program violates the constitutional right of parents to direct the upbringing of their children by making prescription contraception and other family-planning services available to children without the consent of their parents.

35. The Court should therefore declare that the Title X program, as currently administered, violates the constitutional right of parents to direct the upbringing of their children.

36. The Court should also enjoin the defendants from directly or indirectly funding any family-planning project in the United States that fails to obtain parental consent before distributing prescription contraception or other family-planning services to minors, or from awarding grants or entering into contracts with any entity that assists a family-planning project in the United States that fails to obtain parental consent before distributing prescription contraception or other family-planning services to minors.

37. Mr. Deanda brings this claim on behalf of every parent in the United States who wishes to be informed if their children are accessing or attempting to access prescription contraception or other family-planning services, or who wishes to prevent their children from obtaining or using these drugs or services without their consent.

**CLAIM NO. 3—THE DEFENDANTS’ ADMINISTRATION OF
THE TITLE X PROGRAM VIOLATES THE RELIGIOUS
FREEDOM RESTORATION ACT**

38. The Religious Freedom Restoration Act prohibits the government from substantially burdening the exercise of religion, unless that burden furthers a “compelling governmental interest” and is the “least restrictive means” of doing so. 42 U.S.C. § 2000bb-1.

39. The Religious Freedom Restoration Act “was designed to provide very broad protection for religious liberty,” and it goes “far beyond what [the Supreme] Court has held is constitutionally required.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014).

40. The defendants’ administration of the Title X program substantially burdens the exercise of religion by subverting the ability of parents to raise their children in accordance with Christian beliefs on matters of sexuality, which require unmarried children to practice abstinence and refrain from sexual intercourse until marriage, and by enabling children to access to prescription contraception and other family-planning services that facilitate sexual promiscuity and pre-marital sex when their parents object to this behavior.

41. There is no compelling governmental interest in allowing children to obtain prescription contraception and other family-planning services without their parents’ knowledge or consent. Although the government may have a compelling interest in overriding parental objections to medically necessary health-care services, there is no compelling governmental interest in overriding parental objections when a child seeks

access to drugs or devices that serve only to facilitate sexual promiscuity and pre-marital sex.

42. The Court should therefore declare that the Title X program, as currently administered, violates the Religious Freedom Restoration Act.

43. The Court should also enjoin the defendants from directly or indirectly funding any family-planning project in the United States that fails to obtain parental consent before distributing prescription contraception or other family-planning services to minors, or from awarding grants or entering into contracts with any entity that assists a family-planning project in the United States that fails to obtain parental consent before distributing prescription contraception or other family-planning services to minors.

44. Mr. Deanda brings this claim on behalf of every parent in the United States who is attempting to raise their children in accordance with religious beliefs that require unmarried individuals to practice abstinence and refrain from sexual intercourse until marriage.

CLASS-ACTION ALLEGATIONS

45. Mr. Deanda brings this class action under Rule 23(b)(2) of the federal rules of civil procedure.

46. The first class consists of all parents in Texas who wish to be informed if their children are accessing or attempting to access prescription contraception, or who wish to prevent their children from obtaining or using these drugs without their consent.

47. The second class consists of all parents in the United States who wish to be informed if their children are accessing or attempting to access prescription contraception or other family-planning services, or who wish to prevent their children from obtaining or using these drugs or services without their consent.

48. The third class consists of all parents in the United States who: (1) are attempting to raise their children in accordance with religious beliefs that require unmarried individuals to practice abstinence and refrain from sexual intercourse until marriage; and (2) who wish to be informed if their children are accessing or attempting to access prescription contraception or other family-planning services, or who wish to prevent their children from obtaining or using these drugs or services without their consent.

49. The number of persons in each of the proposed classes makes joinder of the individual class members impractical.

50. There are questions of law common to each of the classes. The legal question common to the first class is whether the defendants' administration of the Title X program violates section 151.001(6) of the Texas Family Code. The legal question common to the second class is whether the defendants' administration of the Title X program violates the constitutional right of parents to direct the upbringing of their children. The legal question common to the third class is whether the defendants' administration of the Title X program violates the Religious Freedom Restoration Act.

51. Mr. Deanda's claims are typical of other members of each of the proposed classes.

52. Mr. Deanda adequately represents the interests of the class, and he has no interests antagonistic to the class.

53. A class action is appropriate under Rule 23(b)(2) because the defendants are acting on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

DEMAND FOR RELIEF

54. Mr. Deanda respectfully requests that the court:

- a. certify the classes described in paragraphs 46–48;
- b. declare that defendants’ administration of the Title X program violates section 151.001(6) of the Texas Family Code, the constitutional right of parents to direct the upbringing of their children, and the Religious Freedom Restoration Act;
- c. award the injunctive relief described in paragraphs 31, 35, and 43;
- d. award costs and attorneys’ fees under 42 U.S.C. § 1988;
- e. award all other relief that the Court deems just, proper, or equitable.

Respectfully submitted.

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Dated: April 10, 2020

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TEXAS FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING
THE PARENT-CHILD RELATIONSHIP

SUBTITLE B. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 151. RIGHTS AND DUTIES IN PARENT-CHILD RELATIONSHIP

Sec. 151.001. RIGHTS AND DUTIES OF PARENT.

- (a) A parent of a child has the following rights and duties:
- (1) the right to have physical possession, to direct the moral and religious training, and to designate the residence of the child;
 - (2) the duty of care, control, protection, and reasonable discipline of the child;
 - (3) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education;
 - (4) the duty, except when a guardian of the child's estate has been appointed, to manage the estate of the child, including the right as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;
 - (5) except as provided by Section 264.0111, the right to the services and earnings of the child;
 - (6) the right to consent to the child's marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment;
 - (7) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
 - (8) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;
 - (9) the right to inherit from and through the child;
 - (10) the right to make decisions concerning the child's education; and
 - (11) any other right or duty existing between a parent and child by virtue of law.

(b) The duty of a parent to support his or her child exists while the child is an unemancipated minor and continues as long as the child is fully enrolled in a secondary school in a program leading toward a high school diploma and complies with attendance requirements described by Section 154.002(a)(2).

(c) A parent who fails to discharge the duty of support is liable to a person who provides necessities to those to whom support is owed.

(d) The rights and duties of a parent are subject to:

(1) a court order affecting the rights and duties;

(2) an affidavit of relinquishment of parental rights; and

(3) an affidavit by the parent designating another person or agency to act as managing conservator.

(e) Only the following persons may use corporal punishment for the reasonable discipline of a child:

(1) a parent or grandparent of the child; (2) a stepparent of the child who has the duty of control and reasonable discipline of the child; and

(3) an individual who is a guardian of the child and who has the duty of control and reasonable discipline of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 23, eff. Sept. 1, 1995. Renumbered from Sec. 151.003 by Acts 2001, 77th Leg., ch. 821, Sec. 2.13, eff. June 14, 2001. Amended by Acts 2001, 77th Leg., ch. 964, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1036, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 924 (H.B. 383), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 6, eff. September 1, 2007.

Leg., ch. 821, Sec. 2.13, eff. June 14, 2001.

TEXAS FAMILY CODE

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE A. LIMITATIONS OF MINORITY

CHAPTER 32. CONSENT TO TREATMENT OF CHILD BY NON-PARENT OR CHILD

SUBCHAPTER A. CONSENT TO MEDICAL, DENTAL, PSYCHOLOGICAL, AND SURGICAL TREATMENT

Sec. 32.001. CONSENT BY NON-PARENT.

(a) The following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

- (1) a grandparent of the child;
- (2) an adult brother or sister of the child;
- (3) an adult aunt or uncle of the child;
- (4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;
- (5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;
- (6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;
- (7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or
- (8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

(b) Except as otherwise provided by this subsection, the Texas Juvenile Justice Department may consent to the medical, dental, psychological, and surgical treatment of a child committed to the department under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary. Consent for

medical, dental, psychological, and surgical treatment of a child for whom the Department of Family and Protective Services has been appointed managing conservator and who is committed to the Texas Juvenile Justice Department is governed by Sections 266.004, 266.009, and 266.010.

(c) This section does not apply to consent for the immunization of a child.

(d) A person who consents to the medical treatment of a minor under Subsection (a)(7) or (8) is immune from liability for damages resulting from the examination or treatment of the minor, except to the extent of the person's own acts of negligence. A physician or dentist licensed to practice in this state, or a hospital or medical facility at which a minor is treated is immune from liability for damages resulting from the examination or treatment of a minor under this section, except to the extent of the person's own acts of negligence.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 5, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 108 (H.B. 1629), Sec. 1, eff. May 23, 2009.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 37, eff. September 1, 2015.

Sec. 32.002. CONSENT FORM.

(a) Consent to medical treatment under this subchapter must be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

(b) The consent must include:

(1) the name of the child;

(2) the name of one or both parents, if known, and the name of any managing conservator or guardian of the child;

(3) the name of the person giving consent and the person's relationship to the child;

(4) a statement of the nature of the medical treatment to be given; and

(5) the date the treatment is to begin.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 32.003. CONSENT TO TREATMENT BY CHILD.

(a) A child may consent to medical, dental, psychological, and surgical treatment for the child by a licensed physician or dentist if the child:

(1) is on active duty with the armed services of the United States of America;

(2) is:

(A) 16 years of age or older and resides separate and apart from the child's parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of the residence; and

(B) managing the child's own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health, including all diseases within the scope of Section 81.041, Health and Safety Code;

(4) is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy;

(5) consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use;

(6) is unmarried, is the parent of a child, and has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child; or

(7) is serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice, unless the treatment would constitute a prohibited practice under Section 164.052(a) (19), Occupations Code.

(b) Consent by a child to medical, dental, psychological, and surgical treatment under this section is not subject to disaffirmance because of minority.

(c) Consent of the parents, managing conservator, or guardian of a child is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

(d) A licensed physician, dentist, or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment given to or needed by the child.

(e) A physician, dentist, psychologist, hospital, or medical facility is not liable for the examination and treatment of a child under this section except for the provider's or the facility's own acts of negligence.

(f) A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 6, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 821, Sec. 2.01, eff. June 14, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1227 (H.B. 2389), Sec. 2, eff. June 15, 2007.

Sec. 32.004. CONSENT TO COUNSELING.

(a) A child may consent to counseling for:

- (1) suicide prevention;
- (2) chemical addiction or dependency; or
- (3) sexual, physical, or emotional abuse.

(b) A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a child has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may:

- (1) counsel the child without the consent of the child's parents or, if applicable, managing conservator or guardian;
- (2) with or without the consent of the child who is a client, advise the child's parents or, if applicable, managing conservator or guardian of the treatment given to or needed by the child; and
- (3) rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's own treatment under this section.

(c) Unless consent is obtained as otherwise allowed by law, a physician, psychologist, counselor, or social worker may not counsel a child if consent is prohibited by a court order.

(d) A physician, psychologist, counselor, or social worker counseling a child under this section is not liable for damages except for damages resulting from the person's negligence or wilful misconduct.

(e) A parent, or, if applicable, managing conservator or guardian, who has not consented to counseling treatment of the child is not obligated to compensate a physician, psychologist, counselor, or social worker for counseling services rendered under this section.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 32.005. EXAMINATION WITHOUT CONSENT OF ABUSE OR NEGLECT OF CHILD.

(a) Except as provided by Subsection (c), a physician, dentist, or psychologist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent to treatment under this subchapter.

(b) An examination under this section may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests.

(c) Unless consent is obtained as otherwise allowed by law, a physician, dentist, or psychologist may not examine a child:

(1) 16 years of age or older who refuses to consent; or

(2) for whom consent is prohibited by a court order.

(d) A physician, dentist, or psychologist examining a child under this section is not liable for damages except for damages resulting from the physician's or dentist's negligence.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 1, eff. Sept. 1, 1997. SUBCHAPTER B. IMMUNIZATION

Sec. 32.101. WHO MAY CONSENT TO IMMUNIZATION OF CHILD.

(a) In addition to persons authorized to consent to immunization under Chapter 151 and Chapter 153, the following persons may consent to the immunization of a child:

(1) a guardian of the child; and

(2) a person authorized under the law of another state or a court order to consent for the child.

(b) If the persons listed in Subsection (a) are not available and the authority to consent is not denied under Subsection (c), consent to the immunization of a child may be given by:

- (1) a grandparent of the child;
- (2) an adult brother or sister of the child;
- (3) an adult aunt or uncle of the child;
- (4) a stepparent of the child;
- (5) an educational institution in which the child is enrolled that has written authorization to consent for the child from a parent, managing conservator, guardian, or other person who under the law of another state or a court order may consent for the child;
- (6) another adult who has actual care, control, and possession of the child and has written authorization to consent for the child from a parent, managing conservator, guardian, or other person who, under the law of another state or a court order, may consent for the child;
- (7) a court having jurisdiction of a suit affecting the parent-child relationship of which the minor is the subject; (8) an adult having actual care, control, and possession of the child under an order of a juvenile court or by commitment by a juvenile court to the care of an agency of the state or county; or
- (9) an adult having actual care, control, and possession of the child as the child's primary caregiver.

(c) A person otherwise authorized to consent under Subsection (a) may not consent for the child if the person has actual knowledge that a parent, managing conservator, guardian of the child, or other person who under the law of another state or a court order may consent for the child:

- (1) has expressly refused to give consent to the immunization;
- (2) has been told not to consent for the child; or
- (3) has withdrawn a prior written authorization for the person to consent.

(d) The Texas Juvenile Justice Department may consent to the immunization of a child committed to it if a parent, managing conservator, or guardian of the minor or other person who, under the law of another state or court order, may consent for the minor has been contacted and:

(1) refuses to consent; and

(2) does not expressly deny to the department the authority to consent for the child.

(e) A person who consents under this section shall provide the health care provider with sufficient and accurate health history and other information about the minor for whom the consent is given and, if necessary, sufficient and accurate health history and information about the minor's family to enable the person who may consent to the minor's immunization and the health care provider to determine adequately the risks and benefits inherent in the proposed immunization and to determine whether immunization is advisable.

(f) Consent to immunization must meet the requirements of Section 32.002(a).

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.09(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.02, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 38, eff. September 1, 2015.

Sec. 32.1011. CONSENT TO IMMUNIZATION BY CHILD.

(a) Notwithstanding Section 32.003 or 32.101, a child may consent to the child's own immunization for a disease if:

(1) the child:

(A) is pregnant; or

(B) is the parent of a child and has actual custody of that child; and

(2) the Centers for Disease Control and Prevention recommend or authorize the initial dose of an immunization for that disease to be administered before seven years of age.

(b) Consent to immunization under this section must meet the requirements of Section 32.002(a).

(c) Consent by a child to immunization under this section is not subject to disaffirmance because of minority.

(d) A health care provider or facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's immunization under this section.

(e) To the extent of any conflict between this section and Section 32.003, this section controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1313 (S.B. 63), Sec. 1, eff. June 14, 2013.

Sec. 32.102. INFORMED CONSENT TO IMMUNIZATION.

(a) A person authorized to consent to the immunization of a child has the responsibility to ensure that the consent, if given, is an informed consent. The person authorized to consent is not required to be present when the immunization of the child is requested if a consent form that meets the requirements of Section 32.002 has been given to the health care provider.

(b) The responsibility of a health care provider to provide information to a person consenting to immunization is the same as the provider's responsibility to a parent.

(c) As part of the information given in the counseling for informed consent, the health care provider shall provide information to inform the person authorized to consent to immunization of the procedures available under the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. Section 300aa-1 et seq.) to seek possible recovery for unreimbursed expenses for certain injuries arising out of the administration of certain vaccines.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Sec. 32.103 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.09(b), (d), eff. Sept. 1, 1997.

Sec. 32.103. LIMITED LIABILITY FOR IMMUNIZATION.

(a) In the absence of wilful misconduct or gross negligence, a health care provider who accepts the health history and other information given by a person who is delegated the authority to consent to the immunization of a child during the informed consent counseling is not liable for an adverse reaction to an immunization or for other injuries to the child resulting from factual errors in the health history or information given by the person to the health care provider.

(b) A person consenting to immunization of a child, a physician, nurse, or other health care provider, or a public health clinic, hospital, or other medical facility is not liable for damages arising from an immunization administered to a child authorized under this

subchapter except for injuries resulting from the person's or facility's own acts of negligence.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Renumbered from Sec. 32.104 by Acts 1997, 75th Leg., ch. 165, Sec. 7.09(e), eff. Sept. 1, 1997.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Sec. 32.201. EMERGENCY SHELTER OR CARE FOR MINORS.

(a) An emergency shelter facility may provide shelter and care to a minor and the minor's child or children, if any.

(b) An emergency shelter facility may provide shelter or care only during an emergency constituting an immediate danger to the physical health or safety of the minor or the minor's child or children.

(c) Shelter or care provided under this section may not be provided after the 15th day after the date the shelter or care is commenced unless:

(1) the facility receives consent to continue services from the minor in accordance with Section 32.202; or

(2) the minor has qualified for financial assistance under Chapter 31, Human Resources Code, and is on the waiting list for housing assistance.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 2003, 78th Leg., ch. 192, Sec. 1, eff. June 2, 2003.

Sec. 32.202. CONSENT TO EMERGENCY SHELTER OR CARE BY MINOR.

(a) A minor may consent to emergency shelter or care to be provided to the minor or the minor's child or children, if any, under Section 32.201(c) if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(b) Consent by a minor to emergency shelter or care under this section is not subject to disaffirmance because of minority. (c) An emergency shelter facility may, with or without the consent of the minor's parent, managing conservator, or guardian, provide emergency shelter or care to the minor or the minor's child or children under Section 32.201(c).

(d) An emergency shelter facility is not liable for providing emergency shelter or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the facility is liable for the facility's own acts of negligence.

(e) An emergency shelter facility may rely on the minor's written statement containing the grounds on which the minor has capacity to consent to emergency shelter or care.

(f) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

Added by Acts 2003, 78th Leg., ch. 192, Sec. 2, eff. June 2, 2003.

Sec. 32.203. CONSENT BY MINOR TO HOUSING OR CARE PROVIDED THROUGH TRANSITIONAL LIVING PROGRAM.

(a) In this section, "transitional living program" means a residential services program for children provided in a residential child-care facility licensed or certified by the Department of Family and Protective Services under Chapter 42, Human Resources Code, that:

(1) is designed to provide basic life skills training and the opportunity to practice those skills, with a goal of basic life skills development toward independent living; and

(2) is not an independent living program. (b) A minor may consent to housing or care provided to the minor or the minor's child or children, if any, through a transitional living program if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(c) Consent by a minor to housing or care under this section is not subject to disaffirmance because of minority.

(d) A transitional living program may, with or without the consent of the parent, managing conservator, or guardian, provide housing or care to the minor or the minor's child or children.

(e) A transitional living program must attempt to notify the minor's parent, managing conservator, or guardian regarding the minor's location.

(f) A transitional living program is not liable for providing housing or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the program is liable for the program's own acts of negligence.

(g) A transitional living program may rely on a minor's written statement containing the grounds on which the minor has capacity to consent to housing or care provided through the program.

(h) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

Added by Acts 2013, 83rd Leg., R.S., Ch. 587 (S.B. 717), Sec. 1, eff. June 14, 2013.