

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 702

SPONSOR: Senator Saunders

SUBJECT: Consent to Medical Care or Treatment of a Minor

DATE: March 10, 2001 REVISED: 03/21/01 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Wilson	HC	Fav/1 amendment
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill provides that a person who obtains legal power of attorney to provide medical consent for a minor has the power to consent to necessary surgical and general anesthesia services.

This bill amends section 743.0645, Florida Statutes.

## II. Present Situation:

The scope of authority to consent to medical care and treatment for a minor varies depending on the legal or custodial relationship between the minor and the person seeking to exercise the consent. The authority to consent to medical care and treatment of a minor primarily lies with a parent, legal custodian, or legal guardian. It may also arise directly from a statutory provision, court order, or legal power of attorney.

Under chapter 751, F.S., an extended family member who is awarded temporary legal custody of a minor may have medical consent authority awarded as well. An extended family member is defined to include the putative father, the child's grandparent, aunt, uncle, brother, sister or cousin. The consent is limited to "all necessary and reasonable medical and dental care for the child, including nonemergency surgery and psychiatric care" under s. 751.01(3), F.S. The authority may be expressly stated in a court order granting the temporary custody, or may instead be implied authority arising from s. 751.01(3)(a), F.S.

Chapter 709, F.S., provides that a parent may delegate to another through a power of attorney the authority to "make health care decisions" for the parent under s. 709.08(3)(c)3., F.S. The scope of such authority is by reference to, but is not limited to, the definition set forth in chapter 765, F.S. Under s. 765.101(5), F.S., a "health care decision" is defined to include "informed consent,

refusal of consent or withdrawal of consent to any and all health care, including life-prolonging procedures.” This language in chapter 765, F.S., is clearly directed toward personal end-of-life issues. Notwithstanding, chapter 765, F.S., may be construed to authorize the delegation of health care decisions for the minor child of the parent, if so explicitly provided within the power of attorney.

Chapter 744, F.S., states that an appointed guardian may be delegated authority “to consent to medical and mental health treatment” on behalf of a minor who is a ward under s. 744.3215(2)(f), F.S. A parent, brother, sister, next of kin, or other person who is interested in the welfare of a minor may petition for the appointment of a guardian under s. 744.3021, F.S. The chapter does not define the scope of the authority to provide medical consent.<sup>1</sup> However, specific procedures such as performance or participation in experimental biomedical or behavioral procedures, sterilization, or an abortion require additional court approval regardless of a guardian’s consent under s.744.3215(4)(b) and (e), F.S.

Under chapter 39, F.S., the Department of Children and Family Services has general statutory authority to consent to ordinary medical treatment for minors within its legal custody. The scope of that authority is defined by reference to chapter 743, F.S.<sup>2</sup> For specific medical procedures and treatments outside the realm of ordinary medical treatment, the department’s authority to consent is governed by various provisions throughout chapter 39, F.S., and generally involves court review and approval.<sup>3</sup> In addition, a special statutory provision in chapter 39, F.S., allows a court to appoint a guardian advocate for a drug dependent newborn whose drug dependent parent has temporarily left the newborn with a relative or other adult, or has otherwise agreed to voluntary family services.<sup>4</sup> The guardian advocate may consent to necessary medical treatment and other needs of the drug dependent newborn.

Chapter 743, F.S., provides that a medical emergency exception to consent for medical care of a minor is available when consent is unavailable or unattainable from a parent, legal custodian, or legal guardian.<sup>5</sup> Specified persons who do not have court-based or other specific legal authority may be authorized to consent to “medical care and treatment” of a minor for “ordinary and necessary medical and dental examination and treatment” under s. 743.0645(1)(b), F.S. In order of priority, those persons include: a person with a power of attorney for medical consent, a stepparent, a grandparent, an adult brother or sister of the minor, and an adult aunt or uncle of the minor, under s. 743.0645(2), F.S. Expressly excluded is authority to consent to: “surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order or informed consent as provided by law is required” under s. 743.0645(1)(b), F.S.

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<sup>1</sup> As with chapter 765, F.S., the provisions of s. 744.3215, F.S., appear to be geared toward consent for care of an incapacitated adult, rather than the delegation of consent for the care of a minor. See also, s. 744.3115, F.S.

<sup>2</sup> See s. 39.407(2)(c), F.S.

<sup>3</sup> s. 39.407(2)(c), F.S.

<sup>4</sup> The appointment of a guardian advocate for a drug dependent newborn is an expedited judicial process under ss. 39.823-39.8295, F.S. The petition for the appointment of the guardian advocate can be filed by any of the child’s relatives, any licensed health care professional, or other interested person.

<sup>5</sup> The statutory provision is somewhat ambiguous as written such that it is presumed that “parental consent” also means consent from a legal custodian or legal guardian. See s. 743.064(2), F.S.

There appears to be an inconsistency regarding s. 743.0645, F.S. While a “person who possesses a power of attorney to provide medical consent for the minor”<sup>6</sup> expressly “may consent to the medical care or treatment of a minor,”<sup>7</sup> “medical care and treatment” expressly excludes “surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order or informed consent as provided by law is required.”<sup>8</sup> Thus, while a legal power of attorney appears to provide authority for a person to consent to surgery and psychiatric care for a minor under chapters 751, 709, 744, 765, and 39, F.S., it is questionable under chapter 743 due to the language of s. 743.0645, F.S.

In addition, there may be a lack of general awareness that the authority to consent to medical care and treatment of a minor does not arise automatically from a person’s agreement to pay for a minor’s health care services. Consequently, it is not until a specific scheduled or emergency medical procedure for the minor requires express informed consent that a health care provider determines or learns that the person with custody of the minor may not have the legal authority to consent on behalf of the minor.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 743.0645, F.S., regarding other persons who may consent to medical care or treatment of a minor, to provide that a person with power of attorney may consent on behalf of a minor to general surgery and anesthesia services.

**Section 2.** Provides that the bill shall take effect July 1, 2001.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Economic Impact and Fiscal Note:

#### A. Tax/Fee Issues:

None.

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<sup>6</sup> s. 743.0645(2)(a), F.S.

<sup>7</sup> s. 743.0645(2), F.S.

<sup>8</sup> s. 743.0645(1)(b), F.S.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Health, Aging and Long-Term Care:

Provides that medical consent is effective as to those powers of attorney executed after July 1, 2001, and that the authority to consent to medically necessary surgery and general anesthesia is included unless excluded by the individual executing the power of attorney.