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Loyola Public Interest Law Reporter

# HOME ALONE: ALLOWING HEALTH CARE TO WORK FOR UNACCOMPANIED MINORS

*by* GRAHAM BOWMAN

## INTRODUCTION

An estimated 10,000 children in Illinois do not have the luxury of waiting until they turn eighteen before needing to become an adult.<sup>1</sup> Many are forced to leave home as young teenagers, where they must begin what is an already daunting process for most young people—building a life for themselves. Take away the support and guidance that a parent or guardian can offer and it should come as no surprise then that many of these minors become homeless—jumping around between various shelters and friends' houses as they attempt to finish high school or merely stay afloat.<sup>2</sup>

Unaccompanied minors face greater risks while away from home and experience adverse health effects at greater rates than other minors.<sup>3</sup> Unfortunately, Illinois law does not allow minors to access basic health care services without a parent or guardian's consent, which many unaccompanied minors cannot obtain.

The Chicago Coalition for the Homeless (CCH) developed legislation in the Illinois General Assembly this spring that would remove the parental consent barrier for unaccompanied minors and enable these vulnerable young people to access basic preventative health care for the first time.<sup>4</sup> The bill, HB4501, was introduced by Representative Greg Harris and Senator Heather Steans and passed unanimously out of both houses on May 21, 2014.<sup>5</sup> The bill is currently waiting to be signed into law by Governor Quinn.

#### HB4501: EXPANDING ACCESS TO CARE FOR UNACCOMPANIED MINORS

HB4501 would amend the Illinois Minors Consent to Medical Procedures Act to allow minors 14 and older who are "living separate and apart from a parent or legal guardian" and who are also "managing their own affairs" to consent to outpatient, non-invasive medical procedures.<sup>6</sup> The minor must also be identified in writing as an unaccompanied minor by certain professionals that work with homeless youth, such as a social worker or school homelessness liaison, or by an adult relative.<sup>7</sup> Minors involved with the foster care system are excluded from this definition.<sup>8</sup>

#### WHO ARE UNACCOMPANIED MINORS?

The Chicago Coalition for the Homeless estimates there are around 10,000 homeless youth in Illinois, based on a 2005 study.<sup>9</sup> Young people usually leave home due to extreme family dysfunction, rather than a youthful impulse to go it alone.<sup>10</sup> Many times, they leave in order to escape physical or emotional abuse, conflicts caused by a parent or guardian's substance abuse, or family conflict over the young person's emerging sexual identity.<sup>11</sup> In some cases, the minor did not choose to leave at all, but were "locked out" or "thrown away" by their parent or guardian.<sup>12</sup>

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Once out of the house, unaccompanied minors typically have very unstable living situations and usually stay with an assortment of friends and relatives for brief periods of time. Some end up on the street.<sup>13</sup> Eventually, as much as 53% of unaccompanied minors end up in the foster care system.<sup>14</sup>

However, most minors nearing adulthood do not enter the foster care system. According to Julie Dworkin, the Director of Policy at the Chicago Coalition for the Homeless, “The Department of Children and Family Services is reluctant to open a case for a youth who is over age 16.”<sup>15</sup> Instead, some unaccompanied minors in Illinois are identified by a Comprehensive Community Based Youth Services agency (CCBYS), which will attempt to re-unify the minor with their parents or guardian and place them in a temporary shelter in the meantime.<sup>16</sup>

Some of the organizations that provide shelter for these CCBYS-involved minors employ health care providers that cannot serve the youth under their care. For example, Teen Living Programs (TLP) in Chicago employs a Nurse Practitioner, Telve Urban. Ms. Urban testified at the House Judiciary Committee hearing on HB4501, explaining that “[TLP has] numerous situations where a young person did not even have contact information for their guardian due to the guardian moving or being evicted and not contacting the client. In those cases, I am unable to give a client Benadryl for a mild allergic rash.”

#### WHAT HEALTH CARE SERVICES CAN UNACCOMPANIED MINORS ACCESS?

According to the Illinois Supreme Court, “although the age of majority in Illinois is 18, that age is not an impenetrable barrier that magically precludes a minor from possessing and exercising certain rights normally associated with adulthood.”<sup>17</sup> Unaccompanied minors in Illinois can consent to some health care services without a parent or guardian’s involvement, but not the majority of preventative care or treatments for simple ailments such as those described by Ms. Urban.<sup>18</sup>

Any minor who is pregnant, parenting, or married has the same right to consent to health care services as an adult.<sup>19</sup> This means that they have essentially unfettered access to all health care services and do not need a parent to provide consent on their behalf. One notable exception to this rule is the Parental

Notice of Abortion Act of 1995, which requires minors to notify a parent or guardian when they choose to get an abortion.<sup>20</sup>

Minors that do not fit into one of these categories can still consent to certain health care procedures without a parent or guardian's consent.<sup>21</sup> However, the scope of services available to them is severely limited. With some restrictions, minors can consent to emergency services, some mental health services, some services related to parental abuse, and treatment for sexual health issues.<sup>22</sup>

#### EMANCIPATED MATURE MINORS

Minors can gain the ability to consent to any healthcare service if they are determined to be a "mature minor" in Juvenile Court. The Illinois Supreme Court recognized in *In re E.G., a Minor*, 133 Ill. 2d 98 (1989) that although a parent or guardian is typically required to provide consent on behalf of their child, some minors are of sufficient maturity and capacity to make independent decisions regarding their health care.<sup>23</sup>

However, the procedure for being determined to be a "mature minor" is not easy and would likely require legal representation.<sup>24</sup> The Illinois Emancipation of Minors Act allows a minor over the age of 16 "who has demonstrated the ability and capacity to manage his own affairs and to live wholly or partially independent of his parents or guardian" to be either fully or partially emancipated from their parents and therefore gain the ability to consent to all health care services.<sup>25</sup>

In *In re E.G.*, the Illinois Supreme Court noted that a court is only required to determine a child's maturity for the purpose of consenting to health care when the legislature has not addressed the issue for itself.<sup>26</sup> HB4501 seeks to do just that. By defining the circumstances in which a minor has the capacity to consent to basic health care services, HB4501 would allow unaccompanied minors to bypass going to court and access care immediately.<sup>27</sup>

#### CONCLUSION

HB4501 would significantly expand access to preventative health care services for a vulnerable population that is statistically more likely to have health

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problems than their housed counterparts.<sup>28</sup> It would accomplish this goal by removing both a practical and legal barrier to receiving treatment—the requirement to either obtain the consent from an absent parent or guardian, or become at least partially emancipated in a judicial proceeding.<sup>29</sup> If passed, Illinois would become the 17th state<sup>30</sup> in the United States to give unaccompanied minors the ability to access basic health care services, and, in doing so, allow those youth to remain healthy and continue on their difficult and prematurely begun journey towards self-sufficiency.

## NOTES

1 Timothy P. Johnson and Ingrid Graf, *Unaccompanied Homeless Youth in Illinois: 2005 SURVEY RESEARCH LABORATORY UNIVERSITY OF ILLINOIS AT CHICAGO* (December 2005) available at <http://www.srl.uic.edu/publist/stdyrpts/youthreport.pdf>

2 “Street youth often spend significant amounts of time in adult caregivers’ homes, shelters, and temporary quarters with friends or other family (Greenblatt & Robertson, 1993).” Paul A. Toro, PhD, Amy Dworsky, PhD, and Patrick J. Fowler, MA, *Homeless Youth in the United States: Recent Research Findings and Intervention Approaches* (March 2007), available at <http://aspe.hhs.gov/hsp/homelessness/symposium07/toro/#Family>

3 U.S. DEPARTMENT OF HUMAN SERVICES, Program Assistance Letter 2001-10: *Understanding the Health Care Needs of Homeless Youth* (January 24, 2010), available at <http://bphc.hrsa.gov/policiesregulations/policies/pdfs/pal200110.pdf>

4 CHICAGO COALITION FOR THE HOMELESS, *Senate Judiciary Recommends CCH Bill to Allow Unaccompanied Minors to Consent to Non-emergency Medical Care* (May 6, 2014), available at [http://www.chicagohomeless.org/cch-drafts-state-bill-to-allow-unaccompanied-minors-to-consent-to-non-emergency-medical-treatment/](http://www.chicagohomeless.org/cch-drafts-state-bill-to-allow-unaccompanied-minors-to-consent-to-non-emergency-medical-treatment/#sthash.Ug1TclSQ.dpuf)

5 H.B. 4501, 98th Gen. Assem., Reg. Sess. (Ill. 2014), available at <http://ilga.gov/legislation/billstatus.asp?DocNum=4501&GAID=12&GA=98&DocTypeID=HB&LegID=78910&SessionID=85>

6 *Id.*

7 *Id.*

8 *Id.*

9 Johnson, *supra* note 1.

10 Toro, *supra* note 2; Johnson, *supra* note 1 at 32

11 “Youth consistently identify conflict with their parents as the primary reason for their homelessness (Whitbeck et al., 2002; Robertson & Toro, 1999), and they tend to report more family conflict than their peers who are housed (Toro & Goldstein, 2000; Wolfe, Toro, & McCaskill, 1999). These conflicts end to reflect longstanding patterns rather than problems that arise just before youth leave home (Smollar, 1999). Conflicts related to step-parent relationships, sexual activity, pregnancy, sexual orientation, school problems, and alcohol or drug use seem to be the most common (Owen et al., 1998; Robertson & Toro, 1999; Whitbeck & Hoyt, 1999).” Toro, *supra* note 2.

12 *Id.*

13 Toro, *supra* note 2.

14 *Id.*

15 Interview with Julie Dworkin, Chicago Coalition for the Homeless Director of Policy, to Graham Bowman (April 4, 2014).

16 ILLINOIS DEPARTMENT OF HUMAN SERVICES, “Comprehensive Community Based Youth Services,” *available at* <http://www.dhs.state.il.us/page.aspx?item=30768>.

17 *In re E.G., A Minor*, 133 Ill. 2d 98, 107 (1989).

18 410 ILCS 210.

19 410 ILCS 210/1.

20 750 ILCS 70/1.

21 410 ILCS 210/3(a)-(b).

22 410 ILCS 210/3(a)-(b); 405 ILCS 5; 325 ILCS 10; 750 ILCS 70; 325 ILCS 10; 410 ILCS 305/9; 405 ILCS 5/3-501(a); 405 ILCS 5/3-502.

23 *In re E.G., A Minor*, *supra* note 17, at 107.

24 750 ILCS 30.

25 750 ILCS 30/3-2.

26 “The trial judge must determine whether a minor is mature enough to make health care choices on her own. An exception to this, of course, is if the legislature has provided otherwise, as in the Consent by Minors to Medical Operations Act (Ill. Rev. Stat. 1987, ch. 111, par. 4501 *et seq.*)” *In re E.G., A Minor*, *supra* note 17 at 111.

27 *Id.*

28 U.S DEPARTMENT OF HUMAN SERVICES, *supra* note 3.

29 H.B. 4501, 98th Gen. Assem., Reg. Sess. (Ill. 2014).

30 Other States with similar laws include: Alaska; California; Colorado; Hawaii; Indiana; Kansas; Maine; Maryland; Massachusetts; Minnesota; Montana; Nevada; New Mexico; Oklahoma; Texas; Wyoming. *See* NATIONAL DISTRICT ATTORNEYS ASSOCIATION, “Minor Consent to Medical Treatment Laws” (January 2013), *available at* [http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20\(2\).pdf](http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20(2).pdf).