

FAMILY ISSUES FACT SHEET

No. 2024-01 (January 2024)

HB 2183 PARENTAL RIGHTS; MEDICAL RECORDS

EXECUTIVE SUMMARY

Arizona law recognizes the fundamental right of parents to raise their children without interference by the government or other institutions. This means a parent has the right to make *all* health care decisions for a child and the right to request, access and review *all* written and electronic medical records of the child. HB 2183 clarifies that health care providers must give parents access to medical records whether online or in print, including records for services to which the minor can independently consent.

A full 91% of Arizona voters support parental access to all their children's medical records.

BACKGROUND

Many Arizona health care providers use online portals to deliver health care to families. These electronic portals allow parents to view their child's medical records, make payments, schedule appointments, contact pediatricians and other physicians directly, and request prescription refills, among other services. Increasingly, health providers are shutting parents out of these portals when their child turns 12. Parents are understandably alarmed.

Federal and state law recognize parents as having the ultimate authority to make medical decisions for their children. Under the U.S. Constitution, parents have the fundamental right to raise their childrenⁱ including making important medical decisions for them.ⁱⁱ Arizona law explicitly protects the right of parents to make all health care decisions for the minor child and to access and review all medical records of a minor childⁱⁱⁱ and specifically requires parental consent for surgery, mental health care, and abortion.^{iv}

Yet local health care providers, hiding behind a rhetorical cocktail of HIPPA privacy rules and a handful of state laws allowing minors to obtain certain medical procedures without parental consent^v, exclude parents from access to electronic health care portals. HB 2183 makes sure that parents have the online access they need and deserve so they can care for their children.

TALKING POINTS

- 1. Parents—not the state nor healthcare providers--have the right and responsibility to make medical decisions for their children. Parents must have easy access to their children’s medical records to carry out this responsibility.**
- 2. Our laws acknowledge the fundamental right of parents to raise their children, including the right to access educational and medical records.** In this technological era, parents must have easy access to *electronic records* as well as written records.
- 3. Health care institutions cannot take it upon themselves to decide if or when parents get access to their own children’s medical records.**
- 4. A full 91% of Arizona voters believe parents should have access to all of their children’s medical records.**

CONCLUSION

HB 2183 clarifies existing parental rights to direct the upbringing of their children including their medical care without unjust interference by the government or private institutions.

ⁱ *Troxel v. Granville*, 530 U.S. 57 (2000) (recognizing that the “interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court”); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”);

ⁱⁱ The Ninth Circuit has repeatedly recognized a constitutional right of parents to make medical decisions for their children. See *Doe v. Lebbos*, 348 F.3d 820, 828-29 (9th Cir. 2003) (citing *Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 1998) (“The right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state.”). Both opinions rely on a U.S. Supreme Court case that held that it is in the interest of both parents and children that parents have ultimate authority to make medical decisions for their children unless a “neutral fact finder” determines, through due process hearing, that parent is not acting in child’s best interests. *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

ⁱⁱⁱ See A.R.S. §§ 1-601, 1-602(A).

^{iv} A.R.S. §§ 36-2271, -2272, -2152.

^v In general, Arizona law requires parental consent for any medical procedures involving a minor. However, Arizona law contains several exceptions to the general rule of parental consent for medical treatment. A.R.S. § 36-2152 (abortion via judicial bypass); A.R.S. § 36-2271 (emergency surgery); A.R.S. § 36-2272 (emergency mental health screening or treatments); A.R.S. § 44-133 (emergency); A.R.S. § 44-132.01 (venereal disease); A.R.S. § 44-133.01 (emergency substance abuse treatment). Minors receiving Title X family planning services also have the right under federal law to keep records for those services confidential from parents.