



Illinois Hospital Association

November 19, 2007

MEMORANDUM

TO: CEOs, Member Hospitals and Health Systems

ROUTE TO: Directors, Patient Services, Social Work, Risk Management

FROM: Kathleen Pankau, IHA Legal Department

SUBJECT: **Consent by Minors for Medical Treatment-Updated**

Under Illinois law, a minor is a person who has not attained the age of 18 years.¹ In general, only a parent or guardian may consent for medical treatment of a minor child. However, under Illinois law, there are several exceptions that permit a minor to consent, and these exceptions depend upon either the minor's legal status or upon the type of medical care to be delivered.

Exceptions Based on Minor's Legal Status

Emancipated², pregnant or married minors may consent for their own treatment. A minor between the age of 16 and 18 years old who presents a court order declaring him or her emancipated, or a pregnant or married minor of any age, may lawfully consent to the performance of any medical or surgical procedure.³

Minors who are parents may consent for their own treatment. A minor who is a parent may lawfully consent to his or her own health care treatment.⁴ But, if the minor's status as a parent ends, for example, if the minor gives up his or her child for adoption, then it would appear the minor no longer has authority to consent to his or her own treatment.

Minors who are parents may consent for their child's treatment. Any parent, including a parent who is a minor, regardless of age, may consent to health care on behalf of his or her child.⁵ This provision applies to parents who are divorced or separated; either

¹ Probate Act of 1975 (755 ILCS 5/11-1)

² Emancipated minors are minors between the ages of 16 and 18 who have obtained a court order which states that they are legally emancipated. (Emancipation of Minor's Act, 750 ILCS 30/1, *et. seq.*). The minor claiming to be emancipated should present the court order before nonemergency services are provided, both to verify the minor's status and to ascertain whether there are restrictions on the emancipation, which might limit the minor's ability to consent to medical care.

³ Consent by Minors to Medical Procedures Act, 410 ILCS 210/1, *et. seq.*

⁴ 410 ILCS 210/1

⁵ 410 ILCS 210/2

parent may consent for the child, so long as the divorce decree or custody order does not state otherwise. The hospital does not have an obligation to investigate the terms of the divorce decree or custody order. In most cases, it is sufficient if a parent is present and seeking care for his or her child.

Exceptions Based on Medical Treatment

Medical Emergencies. Emergency medical treatment may be provided to a minor without parental consent when, in the opinion of the provider, obtaining consent is not “reasonably feasible under the circumstances without adversely affecting the condition of the minor’s health.”⁶ A “provider” includes a physician, dentist, hospital, physician assistant or advanced practice nurse.

Medical Treatment/Counseling for Criminal Sexual Assault or Abuse. Any minor who is a victim of sexual assault or abuse may consent to medical care or counseling related to the diagnosis or treatment of “any disease or injury arising from such offense.”⁷

Sexually Transmitted Disease. A minor 12 years of age or older may consent to treatment or counseling related to the diagnosis and treatment of a sexually transmitted disease. Unless the minor consents, providers cannot seek the family’s involvement in the minor’s treatment. On the other hand, providers *may, but are not obligated to*, inform parents or guardians about treatment or counseling provided to a minor with any sexually transmitted disease.⁸

Drug Use or Alcohol Consumption. A minor 12 years of age or older may consent to treatment or counseling related to drug use or alcohol consumption by the minor or the effects on the minor of drug or alcohol abuse by a member of the minor’s family. Unless the minor consents, providers cannot seek the family’s involvement in the minor’s treatment. In addition, providers *may not* inform the parents without the minor’s consent, unless necessary to protect the safety of the minor, a family member, or another individual.⁹

Outpatient Mental Health Services. A minor 12 years of age or older may consent to outpatient mental health services for up to 5 sessions of no more than 45 minutes each for the treatment of mental illness or emotional disturbance. The minor’s parent or guardian cannot be informed of counseling or psychotherapy without the consent of the minor “unless the facility director believes such disclosure is necessary.” If the director intends to disclose the fact of counseling, the minor must be informed. A minor’s parent is not responsible for the cost of the sessions, unless he or she has consented to the treatment.¹⁰

⁶ 410 ILCS 210/3 (a)

⁷ 410 ILCS 210/3(b); Sexual Assault Survivors Emergency Treatment Act, 410 ILCS 70/5(b)

⁸ 410 ILCS 210/4

⁹ 410 ILCS 210/5

¹⁰ Illinois Mental Health and Developmental Disabilities Code, 405 ILCS 5/3-501

Inpatient Mental Health Services. A minor 16 years of age or older may consent to admission to a mental health facility for inpatient services if the minor himself executes the application for voluntary admission. Unlike outpatient services, providers must immediately inform the minor's parent, guardian, or person *in loco parentis*¹¹ of the admission, even if the minor does not consent to the disclosure.¹²

Birth Control Services.¹³ Birth control services and information may be rendered by doctors licensed in Illinois to any minor:

1. Who is married; or
2. Who is a parent; or
3. Who is pregnant; or
4. Who has the consent of a parent or guardian; or
5. If the failure to provide such services creates a serious health hazard; or
6. If the minor is referred for such services by a physician, clergyman or a planned parenthood agency.

Abortion. Although Illinois has a parental notice law¹⁴ for any person under 18 years of age seeking an abortion, a federal court barred its implementation in 1996. As a result, Illinois operates under the law set out in *Bellotti v. Baird*,¹⁵ in which the U.S. Supreme Court found that state laws cannot infringe upon a minor's right to an abortion if she can show she is mature and fully competent to make the decision independently. Therefore, the minor's constitutional right to an abortion permits the minor to consent without parental involvement. But, expect that the parental notice law may be implemented soon because the Illinois Attorney General recently asked the federal court to lift the injunction.

Blood Donation. Though technically not medical treatment, state law provides that any person 17 years of age or older may donate blood without permission from his parent or guardian, and any person 16 years of age may donate blood with written permission.¹⁶

Minor's Right to Refuse Treatment. Illinois does not automatically recognize a minor's right to refuse medical treatment like it does with adults who complete living wills or a Power of Attorney for Healthcare. The Illinois Supreme Court has recognized a mature minor's right to refuse life-sustaining medical treatment,¹⁷ however, the factual circumstances in this case were very narrow and limit the right to refuse treatment. Hospitals should consult with ethics committees and attorneys when confronted with a minor who refuses life-sustaining treatment.

¹¹ The term "in loco parentis" might include an aunt or uncle or some other adult who does not have legal guardianship but who otherwise stands in the shoes of a parent.

¹² 405 ILCS 5/3-502

¹³ Birth Control Services for Minors Act, 325 ILCS 10/1

¹⁴ Parental Notice of Abortion Act of 1995, 750 ILCS 70/1, et.seq.

¹⁵ 443 U.S. 622, 99 S. Ct. 3035 (U.S. Mass., 1979)

¹⁶ Blood Donation Act 210 ILCS 15/1

¹⁷ In re E.G., 133 Ill. 2d 98, 549 N.E. 2d 322 (1989).

Release of a Minor's Medical Records.

In General. Since the minors mentioned above are capable of giving valid consent for treatment, it may be presumed that the minor also has the right to control the release of his or her medical record information. Most of the laws either specifically state that the minor's consent is required for the release of information or state that the minor may consent to treatment "as if the minor had reached the age of majority." Therefore, the implication is that, when treatment is in relation to any of the above, the hospital should obtain the minor's consent before releasing the minor's medical information to his or her parents.

Release of Sexual Assault Evidence and Information to Police. In the case of a minor sexual assault survivor, 13 years of age or older, evidence and information concerning the alleged sexual assault may be released at the written request of the minor.¹⁸ However, if the survivor is a minor under 13 years of age, evidence and information concerning the alleged sexual assault may only be released at the written request of the parent, guardian, investigating law enforcement officer, or the Department of Children and Family Services.

There is immunity from civil or professional liability for health care professionals or institutions that provide evidence or information to a law enforcement officer pursuant to a written request so long as the requirements of the law are met.

You may access the laws referenced in the footnotes of this memo at the Illinois General Assembly's website: <http://www.ilga.gov>. Click on "Illinois Compiled Statutes."

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¹⁸ The Sexual Assault Survivors Emergency Treatment Act 410 ILCS 70/1 et. seq.