The School Nurse’s Role in Protecting and Understanding Informed and Minor Consent in the School Setting
THE SCHOOL NURSE’S ROLE IN PROTECTING AND UNDERSTANDING INFORMED AND MINOR CONSENT IN THE SCHOOL SETTING

Foreword

These guidelines contain recommendations for minimum standards of care and current best practices for the health service topic addressed. They have been reviewed by the School Nurse Practice Subcommittee of the Michigan Statewide School Nurse Task Force as a means to provide consistent and safe care to the students. Specific laws and regulations that direct school nursing practice or other health services are identified in the guidelines. There is no guarantee that the use of guidance in this document will lead to any particular result or outcome. The information in this document was researched in June, 2016.

Purpose

This document will provide guidelines and resources for the school nurse’s role in protecting and understanding informed and minor consent in the school setting.

Overview

Issues of consent may surface for school nurses in their role of providing care to students. As a basic rule, health care providers must have parental consent before treating a minor (Laubin, Schwab & Doyle, 2012; Pohlman & Schwab, 2001). Informed consent means the person providing consent must have received enough information about the risks and benefits of the proposed treatment and it alternatives, including no treatment, to have an informed decision (Laubin et al., 2012; Pohlman & Schwab, 2001). Most states identify the age of majority as 18 years (Laubin et al., 2012). In general, parents give “implied consent” for routine school nursing services when they send their children to school each day (Laubin et al., 2012). If specialized health care services, such as tube feedings or nebulizer treatment are provided, informed consent must be obtained from the parent and documented (Laubin et al., 2012; Pohlman & Schwab, 2001). Whether minor children can make decisions about their own medical treatment is a matter of both ethical and legal principles (Pohlman & Schwab, 2001). State laws allow minors to consent for their health care on the basis of their status (e.g. as an emancipated or mature minor or a pregnant or parenting teenager) and on the basis of services they seek (e.g. sexually transmitted infection diagnosis and treatment, contraception, pregnancy care, substance abuse counseling/treatment, or mental health care (American Academy of Pediatrics [AAP] Committee on Adolescence and Council on Clinical and Information Technology, 2012).

In general, the emancipated minor can function as an adult. They can give consent for medical evaluation and treatment and they may also refuse medical care and transport. (AAP Committee on Pediatric Emergency Medicine and Committee on Bioethics, 2011). An emancipated minor is usually defined as someone younger than 18 who is married, on active military duty, or who can demonstrate physical and financial independence (Caldart-Olson & Thronson, 2013; Pohlman & Schwab, 2001). If a minor meets the states definition of emancipation, the rights and responsibilities of a student’s parent no longer exist (Schwab & Pohlman, 2002). The concept of “mature minor” is a legal doctrine that permits a minor, without parental consent, to seek health care and treatment based on a finding or belief that a minor is mature enough to make these decisions (Schwab & Pohlman, 2002). In Michigan, a minor is a person 17 years or younger (The Network for Public Health Law, 2012). All 50 states and the District of Columbia allow minors to consent for diagnosis and treatment of sexually transmitted infections as well as giving consent to receive confidential family planning services at sites funded by the
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federal Title X Family Planning Program (Burnstein, 2010). Consent laws for minors obtaining substance
abuse services and mental health care vary by state (Burnstein, 2010).

State and federal laws provide protection of privacy when minors consent for their own health care.
HIPAA rules defer to state law regarding minors with “exceptional circumstances” (e.g., adolescent
seeking care for sexually transmitted infections) and gives the minor and not the parent the right to this
protected health information (AAP Committee on Adolescence and Council on Clinical and Information
Technology, 2012).

Michigan Minor Consent Laws and Information for School Nurses

the rights of minors to obtain health care without consent or knowledge of parents. In general, a parent
or legal guardian must provide consent on behalf of a minor (under age 18) before health care services
are provided with several exceptions:
1. Emergency care.
2. Care for emancipated minors.

Below is information from the Network for Public Health Law (2012) that may be helpful for school
nurses providing care to minors.

<table>
<thead>
<tr>
<th>Health Care Service</th>
<th>Minor Consent Information</th>
<th>Additional information</th>
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<tbody>
<tr>
<td>Birth Control</td>
<td>Minors may obtain information and contraceptives without parental consent from Title X Agencies. Other federally funded services might require that minors be provided with services and protect their health information (e.g. states that receive funding for Medicaid – Title XIX).</td>
<td>Title X Agencies are family planning agencies funded under Title X of the Public Health Service Act that must provide family planning and related services without regard to age or marital status. 42 CFR 59.5</td>
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<tr>
<td>Title X Agencies</td>
<td></td>
<td>Provider discretion applies for providers not funded by Title X or title XIX.</td>
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<tr>
<td>42 CFR 59.5</td>
<td></td>
<td>Parental access to information is not permitted when services provided to the minor are provided by a Title X agency.</td>
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Note: School Code MCL 380.1507
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<tr>
<td>Prenatal and Pregnancy-Related Health Care</td>
<td>The consent of any other person, including the father of the baby or spouse, parent, guardian, or person in loco parentis, is not necessary to authorize health care to a minor or a child of a minor. At the initial visit, permission must be requested of the patient to contact her parents for any additional medical information that may be necessary or helpful.</td>
<td>Parental access to information is not permitted when services provided to the minor are provided by a Title X agency.</td>
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<tr>
<td>MCL 333.9132</td>
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<tr>
<td>Mental Health – Outpatient Care</td>
<td>A minor 14 or older may request and receive up to 12 outpatient sessions or four months of outpatient counseling.</td>
<td>Information may be given to a parent, guardian or person in loco parentis for a compelling reason based on a substantial probability of harm to the minor or another individual. The mental health professional must notify the minor of his/her intent to inform the parent.</td>
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<tr>
<td>MCL 330.1707</td>
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<tr>
<td>Mental Health – Inpatient Care</td>
<td>A minor of 14 years or older may request, and if found suitable, be hospitalized.</td>
<td>Parental access to the minor’s information is permitted.</td>
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<tr>
<td>MCL 330.1498d</td>
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<tr>
<td>Substance Abuse Services</td>
<td>A minor may consent.</td>
<td>For medical reasons, information as to the treatment given or needed, may be given to or withheld</td>
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<td>MCL 333.6121</td>
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<td>Venereal Diseases (STD)/HIV MCL 333.5127</td>
<td>A minor may consent to medical or surgical care for diagnoses and treatment of venereal disease or HIV. (MCL 333.5127, MCL 333.5133 and MCL 722.623) MCL 333.5127 does not apply for medical care to prevent a venereal disease, such as a vaccine unless the service is provided by a Title X funded agency.</td>
<td>For medical reasons, information as to the treatment given or needed, may be given to or withheld from the spouse, parent, guardian or person in loco parentis without the consent of the minor and notwithstanding the express refusal of the minor to the providing of the information. Access to the information is not permitted when services provided to the minor are by a Title X funded agency.</td>
</tr>
<tr>
<td>Abortion MCL 722.901 – 722.909</td>
<td>Written consent of one parent/legal guardian or a judicial waiver (court order) of parental consent from probate court.</td>
<td>Minors must comply with the 24-hour waiting period prior to an abortion. There is parental access to the minor’s information unless a court has issued an order waiving parental consent. Note: School Code MCL 380.1507 <a href="http://www.michiganlegislature.org/mileg.asp?page=getObject&amp;objName=mcl-380-1507">http://www.michiganlegislature.org/mileg.asp?page=getObject&amp;objName=mcl-380-1507</a></td>
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**Health Care Service** | **Minor Consent Information** | **Additional information**
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| | Clinical abortion shall not be considered a method of family planning, nor shall abortion be taught as a method of reproductive health.

**Emergency Care**

**MCL 30.401 et seq.**

There are no specific Michigan statutes on this issue. Parental consent is required other than life-threatening circumstances when immediate medical attention is needed and parents cannot be located. In the case of a response to an emergency or disaster the Governor has the potential to waive consent.

Parental access to the information is permitted.

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**Michigan Child Protection Law**

Child Protection Law-Act 238 of 1975. MCL 722.623


Pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is a reasonable cause to suspect child abuse and neglect have occurred and must be reported.

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**Federal Law**

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<td><strong>34 CFR 99 Family Educational Rights and Privacy Act (FERPA)</strong></td>
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Provides privacy restrictions on student records. School health records are covered under this act. At the elementary or secondary school level, students’ immunization and other health records that are maintained by a school district or individual school, including a school-operated health clinic, that receives funds under any program administered...
School Nurse's Role

The National Association of School Nurses (NASN) (2011) identifies the school nurse as the leader in the school community that oversees school health policies and programs. The Framework for the 21st Century School Nursing Practice provides a conceptual framework that explains the key principals of school nursing and provides structure and focus to current evidence-based school nursing practice (NASN, 2016). Leadership is one of the five key principals in the framework that includes advocacy, policy development and implementation, and systems-level leadership. The American Nurses Association Code of Ethics indicates that the nurse promotes, advocates for, and protects the rights, health, and safety of the patient (Windlan-Brown, J., Lachman, V.D., & Swanson, O. E., 2015). The NASN Position Statement Role of the School Nurse, Framework for the 21st Century School Nursing Practice and the American Nurses Association Code of Ethics provide a structure for school nurses to advocate and develop policies that protect the privacy and confidentiality of students.

Recommendations for Practice

Leadership

1. School nurses need to be familiar with federal law and Michigan law relating to confidentiality and consent.

2. Consider the rights of minors when developing policies and procedures related to health services for adolescent students, referrals to community health care providers, and confidentiality of student information (Laubin, Schwab, & Doyle, 2012).
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Care Coordination

1. Obtain a thorough knowledge of the safety net services and organizations in the community that support “unaccompanied” youth (Adams & Shineldecker, 2014).

2. Reading ability should be discussed and assessed as an overall indicator of developmental well-being when developmental assessments are completed on adolescent minors (Dickey et al., 2002).

3. Document all informed consent discussions, including the identity of the person providing consent and any efforts made to obtain consent from the student’s parent or legal guardian (AAP Council on Pediatric Emergency Medicine and Committee on Bioethics, 2011).

4. Substance use falls within the bounds of adolescent confidentiality (along with mental health, sexuality, and reproductive health issues). When appropriate, review with the minor patient and his or her caregiver examples of what can be kept confidential as well as the limits of confidentiality, such as abuse, self-injury, plans to harm others (Nackers, Kokotailo & Levy, 2015).

Social Determinants of Health

1. The CDC (2009) provides a guide to creating easy-to-understand materials (fact sheets, FAQ’s, brochures, booklets, pamphlets, web content) from scientific and technical information. The guide includes practical ways to organize information and use language and visuals. The guide can be retrieved from http://www.cdc.gov/healthliteracy/pdf/Simply_Put.pdf

Red Flags for Minor Consent

1. Minor consent-to-treatment laws have no relationship to school absence and thus, parents remain responsible for “mature minors” being in school and may be notified of the student’s absence without a valid excuse (Schwab & Pohlman, 2002).

2. Michigan law requires notification of Children’s Protective Services if the student is less than 12 years of age when there is a pregnancy or when a child over one month of age and less than 12 years of has venereal disease (Michigan Department of Health and Human Services [MDHHS], 2013).

3. Family input and support remain very important factors in substance abuse recovery (Nackers, Kokotailo & Levy, 2015).
4. Understand that youth have confidentiality concerns regarding disclosing pertinent information and risky behaviors to parents and health care providers. Health insurance, inability to pay for health care services and lack of access to transportation needed to obtain preventive health care services are other barriers to accessing health care (Lane, 2016).

5. HIPAA privacy regulations establish minimum privacy standards and the right of patients to access their own health information. Under these regulations, a parent, guardian or other person authorized by state law to consent to the minor’s health care, has access to the minor’s health information. One of the exceptions to this regulation is if a minor has a right to consent to health care under state or other law, the minor has exclusive right to control access to health information relating to that care (Network for Public Health Law, 2012).

References


