

Consent Guidelines For Medical Services For The Unaccompanied Child or Adolescent

McKenzie Pediatrics 2011

Introduction:

Parental consent generally is required for the medical evaluation and treatment of minor children. However, children and adolescents might require evaluation of and treatment for emergency and non-emergent medical conditions in situations when a parent or legal guardian is not available to provide consent, or conditions under which an adolescent might possess the legal authority to provide consent.

In general, a medical screening examination and any medical care necessary and likely to prevent imminent and significant harm to the pediatric patient with an emergency medical condition should not be withheld or delayed because of problems obtaining consent. This article will review Oregon law and national standards, in hopes of familiarizing parents and legal guardians with minors' rights to medical care in their absence.

Oregon Law

As per the Oregon Revised Statutes (ORS 109.610 – 109.672), “a minor 15 years of age or older may give consent to any hospital care, medical or surgical [or dental] diagnosis or treatment by a physician [or nurse practitioner] licensed by the Board of Medical Examiners [or, in the case of a nurse practitioner, by the Oregon State Board of Nursing] for the State of Oregon.”

A minor 14 or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional health disorder or chemical dependency, excluding methadone maintenance. However, the person providing treatment shall have the parents of the minor involved before the end of treatment unless the parents refuse or unless there are clear clinical indications documented to the contrary.

And, a minor of any age may consent to venereal disease treatment. However, “without having given consent the parent, parents, or legal guardian shall not be liable for payment for any such care rendered.”

Additionally, “any physician or nurse practitioner may provide birth control information and services to any person without regard to the age of the person.”

Finally, a person “16 years of age or over may donate blood to any blood program without obtaining permission of a parent or guardian”.

Parent and Legal Guardian Rights (Oregon)

While minors have a broad array of rights to medical care in Oregon without the consent of their parent, parents, or legal guardian, “a hospital or any physician, nurse practitioner or dentist...may advise the parent or parents or legal guardian of any minor of the care, diagnosis or treatment of the need for any treatment, with the consent of the patient, and any hospital, physician, nurse practitioner or dentist is not liable for advising the parent, parents, or legal guardian without the consent of the patient.”

Particular examples of the need parental disclosure and therefore breach of adolescent confidence include but are not limited to: deterioration in the minor's condition or the risk of suicide attempt has become such that inpatient treatment is necessary, or the minor's condition requires detoxification in a residential or acute care facility.

National Standards: Emergency Care of Minors

In most cases, children will present to the emergency department or acute care facility with a parent or legally authorized decision-maker who can provide informed consent for evaluation and treatment. However, exceptions do occur, and the national standards (as outlined in common and statutory law) allow for the treatment of minors without parental consent in situations where withholding or postponing care places a child at risk of harm.

While emergency care providers should make every effort to contact the unaccompanied minor's parent or legal guardian to seek consent for evaluation and treatment, the performance of the medical screening examination and the stabilization of the patient with an emergency medical condition must not be delayed. The emergency exception rule is also known as the doctrine of "implied consent", which is based on the assumption that reasonable persons would consent to emergency care if able to do so and that if the legal guardian knew the severity of the emergency, he or she would consent to medical treatment for the child.

However, if an emergency medical condition is not identified after initial screening, the physician or health care professional should seek proper consent before further, non-emergent care is provided.

In cases of suspected abuse or neglect, child protective services or local law enforcement officers may have the authority to consent for evaluation and treatment, although the extent of this authority differs from one jurisdiction to the next.

Sexual and Reproductive Health

The legal ability of minors to consent to a range of sensitive health care services – including sexual and reproductive health care – has expanded dramatically over the past 30 years. This trend reflects the recognition that, while parental involvement in minors' health care decisions is desirable, many minors will not avail themselves of important services if they are forced to involve their parents.

In Oregon, minors 17 and younger may seek contraceptive guidance, as well as sexually transmitted infection diagnosis and treatment, from a licensed physician or nurse practitioner without the consent of his or her parent, parents, or legal guardian. Physicians may (but are not required to) inform the minor's parents. A minor 15 years of age and older may seek prenatal care for a pregnancy without the consent of her parent, parents, or legal guardian, although, again, a physician may (but are not required to) inform the minor's parents.

At the time of this writing, Oregon does not have a relevant policy or case law in regards to abortion services for minors; in other words, there is presently no law that requires parental involvement in a minor's abortion.

Non-Urgent Medical Care

Non-urgent medical care is defined as preventive medicine (i.e. services encompassed in pediatric health supervision visits including immunizations and screening tests) and outpatient medical encounters for minor illnesses or injuries.

A physician or nurse practitioner who provides non-urgent care to a patient without consent of that person or, in the case of a minor 14 years or younger (with the exceptions outlined above in the ORS), someone legally authorized to speak for that person may be vulnerable to legal action.

Consent By Proxy

The process by which people delegate to another person legal right to consent to medical treatment for themselves, for a minor, or for a ward is called consent by proxy.

There are three constraints on this right to delegate for children: 1) the guardian of a minor must have the right to consent to medical treatment for that minor; 2) the guardian must be legally and medically competent to delegate the right to consent to medical treatment for that child; and 3) the right to consent to medical treatment for the child must be delegated to a legally and medically competent adult.

With so many variations in family living arrangements and so many parents in the workforce, it is fairly common for someone other than the child's custodial parent or legal guardian to accompany a child to the pediatrician's office. If it has been anticipated that a caregiver other than a child's parent or legal guardian may bring the child to pediatric visits, arrangements should be made for the custodial parent or legal guardian to provide a WRITTEN consent by proxy. In certain circumstances, such as the provision of medical or surgical treatment of non-minor conditions, the consent by proxy document should be notarized.

The Policies of McKenzie Pediatrics, P.C.

- Non-emergent care (health supervision visits, immunizations, minor or chronic illnesses, and minor injuries) will NOT be provided in the absence of a parent or legal guardian unless there is provided written and signed consent by proxy. Such consent may be rendered by listing on the child's chart registration form of individuals authorized to accompany a child, or in written form on the day of service. Blank consent by proxy forms can be faxed upon request to parents unable to accompany their child to a clinic visit; any such fax must be received prior to administration of medical services to the child.
- With limited exceptions, children who present for non-urgent health supervision visits ("well-child checks") MUST be accompanied by a parent or legal guardian. Those exception include: an adolescent age 15 or older, or a child 14 years or younger accompanied by an authorized adult other than the parent or legal guardian who is, in effect, the primary caregiver due to lengthy parent work hours or extended parental absence.

References:

1. Policy Statement – Consent For Emergency Medical Services For Children and Adolescents. American Academy of Pediatrics, August 2011.
2. Clinical Report – Consent By Proxy For Non-Urgent Pediatrics Care. American Academy of Pediatrics, November 2003
3. Oregon Revised Statutes 109.610 – 109.672
4. An Overview of Minors' Consent Law – Guttmacher Institute, August 1, 2011