

## Adolescent Immunizations: Legal Issues

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## Three questions

- Who may consent to an adolescent's immunization?
- Is information about an adolescent's immunizations confidential?
- Can an adolescent be exempted from required immunizations?

## Who may consent to immunization for a minor?

- Parent, guardian, person *in loco parentis*
- Any other adult (18 or older) who signs a statement that he/she has been authorized by parent/ guardian/ person in loco parentis to obtain the immunization
- DSS if it has custody of minor
- Minor herself in some circumstances

## Case facts



- 16-year-old presents herself for immunization – no accompanying adult.
- Immunizations in question: HPV and MCV4

## Question presented



- Can a minor (< 18 years of age) authorize her own immunization, or must a parent, guardian or other adult authorize it?

## When can a minor authorize her own treatment?

- NC law: A HCP may accept a minor's consent for "medical health services for the prevention, diagnosis, and treatment of four conditions:
  - Venereal disease and reportable communicable diseases
  - Pregnancy
  - Abuse of controlled substances
  - Emotional disturbance

### May a minor authorize the MCV4 immunization under this law?

- Yes. The immunization is a “medical health service” for the prevention of a reportable communicable disease.
- Meningococcal disease is reportable under 10A NCAC 41A.0101.

### May a minor authorize the HPV immunization under this law?

- Yes. The immunization is a “medical health service” for the prevention of a disease that North Carolina public health officials have determined is a “venereal disease” for purposes of this law.
- HPV is not reportable, but it is venereal.

### Which minors can consent?

- To consent to treatment, a person needs both:
  - Legal capacity to consent
  - Decisional capacity (AKA competence) to consent

### Which minors can consent? (cont.)

- Ordinarily minors don't have the legal capacity to consent to their own medical treatment, even if they have decisional capacity. The minor's consent law gives minors legal capacity to consent, but a HCP should not accept the minor's consent unless the minor also has decisional capacity.

### Easy cases



### Where is the line crossed?



### Is information about an adolescent's immunization confidential?

- Yes – protected by HIPAA and state confidentiality laws.
- This does not mean it can't be disclosed, only that any disclosure must be permitted by both HIPAA and state law.

### When do those laws permit disclosure of adolescents' immunization info?

- With authorization
- Without authorization if:
  - Information entered into NCIR is accessed by another health care provider
  - Information is disclosed to an entity that may demand disclosure under state law – schools, public health officials, etc.
  - Some other circumstances allowed by law

### But the most frequently asked question is, what to do when ...

- “I'd like a copy of my child's immunization record, please.”



### But the most frequently asked question is, what to do when ...

- “Did you give my daughter that vaccine that's for STDs?”



### When adolescents consent on their own, can information be disclosed to parents?

- Yes, but in only two circumstances:
  1. If disclosing information to the parent is essential to the life or health of the adolescent, the HCP may disclose (and probably should). The HCP may initiate the disclosure—don't have to wait for parent to ask.

### When adolescents consent on their own, can information be disclosed to parents?

- Yes, but in only two circumstances (cont.):
  2. If the parent contacts the HCP and asks for the information, the HCP *may* disclose the information (but is not required to). The parent must initiate this disclosure.

## Summary

- Minors with decisional capacity may consent to immunizations for the prevention of venereal diseases and reportable diseases.
- Usually, when a minor receives health care on her own consent, she can keep information about the care private.

## Summary (cont.)

- But LHDs are legally obliged to provide complete immunization records to certain others (schools, etc.) on request.
- Plus, LHDs may give information about an immunization a minor received on her own consent to the minor's parent if either:
  - The parent requests it, or
  - Giving the parent the information is essential to the minor's life or health.

## Suggested practices when adolescents consent to immunizations

- Tell the adolescent:
  - Immunization will be documented in her LHD immunization record.
  - Information about the immunization will be kept confidential in accordance with the law.
  - But since the law sometimes requires sharing the information with others, it is possible the information could be disclosed to her parent or guardian.

## Suggested practices (cont.)

- Provide complete immunization records to schools, public health officials, and others who are authorized by law to request them.
- When a parent requests the record, LHD may choose to provide either a complete record, or a record that does not include immunizations the adolescent received on her own consent.

## Suggested practices (cont.)

- Do not tell an adolescent you will keep the information confidential from other health care providers, schools, etc.—this is a promise you cannot keep.

## NC Law: Exemptions

- Two types of exemptions allowed: medical and religious.
- No philosophical or personal exemption in NC.

Which children qualify for a medical exemption?

- Child is exempted when an immunization is medically contraindicated.
- A physician must certify the medical contraindication.
- The contraindication must be recognized by the Advisory Committee on Immunization Practices (ACIP).

Which children qualify for a religious exemption?

- Child is exempted when the bona fide religious beliefs of the child's parent or guardian are contrary to the immunization requirements.
- Objections based on personal beliefs that are not founded in religion don't count.