



Minors and Forensic Exam Access in Minnesota

December 2015

Caroline Palmer, Law and Policy Manager

Under Minnesota law, minors can make certain decisions about health care without receiving permission from parents or guardians. According to the Minnesota Health Records Act a minor patient is defined as including a parent, guardian or person acting in place of a parent except under circumstances outlined in the Minor's Consent to Health Services Act (hereinafter referred to as the MCHSA or "the Act"). Minn. Stat. § 144.291 subd. 2(g).

The public policy reason for the MCHSA is a recognition that young people may not seek out certain types of health care for fear of their parents or guardians finding out they are sexually active or in need of help. If there is sexual abuse or domestic abuse in the home it may be dangerous for the minor to seek out care if permission from a parent or guardian is required. Confidential access to health care providers allows for candid conversations and sometimes the provider can help to start conversations between the minor and the parent or guardian. MCHSA does not remove the health care provider obligation to make a mandated report about child maltreatment or neglect however not every situation that a youth presents will meet the statutory requirement of a mandated report. See Minn. Stat. §626.556 for further information.

Minors who are living on their own and managing their own financial affairs as well as minors who are married or have given birth may make all of their own health care decisions without a parent or guardian. Minn. Stat. §§ 144.341 and 144.342. Any minor, no matter their family situation, can consent on their own to medical, mental health or other health services to determine or treat pregnancy and associated conditions, sexually transmitted infections, alcohol and drug abuse. Minn. Stat. § 144.343 subd. 1. Any medical, dental, mental and other health services may be rendered in an emergency without the consent of a parent or guardian if the risk of harm to the minor patient's life or health caused by delay or denial of treatment is high. Minn. Stat. § 144.344. Note that the statute outlines additional requirements for consent by a parent or guardian (or a judicial bypass) when a minor is seeking an abortion. *Id.* at subds. 2-6.

The MCHSA does allow health care providers to notify parents or guardians in limited circumstances when, in the judgment of the professional, failure to inform would “seriously jeopardize the health of the minor patient.” Minn. Stat. §§ 144.346.

While the MCHSA does not directly address forensic exams provided after a sexual assault the exam does include treatment for a pregnancy and sexually transmitted infections (*see* Minn. Stat. § 609.35) and sexual assault exams generally fall into this category. In very extreme circumstances an exam may fall into the emergency category. There is no affirmative exclusion of any aspect of the forensic exam in the Act or in any other section of the statutes that would call into question the validity of the Act under the Canons of Construction. *See* Minn. Stat. § 645.08. Further, there is no interpretation of the Act to the contrary in case law. Therefore it is reasonable to conclude that a forensic exam is within the purview of the MCHSA.

The MCHSA does not indicate the age of the minor who can consent to care and there are just two other sections in the statutes that have an age requirement connected to accessing health services having to do with blood donation and voluntary institutional treatment. Minn. Stat. §§ 145.41, 253B.03, subd. 6(d), and 253B.04 subd. 1. Since no threshold age is given with regard to minor’s consent to health services, in general health care providers apply the statute at age 13 or in some cases when a female patient has begun menstruating. The MCHSA is not based on the age of consent to sexual activity, which in Minnesota is age 16. Do not confuse age of consent with a minor’s ability to consent to health care.

When a minor accesses care under the MCHSA they have control over their associated health care records and can bar access by a parent or guardian especially when it would not be in the best interest of the minor for the parent or guardian to obtain the information. Minn. Stat. § 144.291 subd. 2(g) and Minnesota Administrative Rules 1205.0500, Subparts 2, 3.A and 3.B.

A minor who accesses health care services under the MCHSA is responsible for any costs associated with the care provided. Minn. Stat. § 144.347. The county where the sexual assault occurred is responsible for the cost of the forensic exam and therefore the minor should not be charged for any expenses directly related to collecting the rape kit. Minn. Stat. § 609.35. However, there may be other charges associated with medical care provided in response to the sexual assault for which the minor will be billed. The minor can use insurance and is entitled to insurance confidentiality protections under the Health Insurance Portability and Accountability Act (HIPAA) if the minor does not want the policy holder to know and when the minor makes a request in writing to protect that information. 45 C.F.R. 164.522(b)(1)(ii) and (b)(2).