A MODEL ACT PROVIDING FOR CONSENT OF MINORS FOR HEALTH SERVICES

PREFATORY NOTE*

This Model Act is drafted with the purpose of stimulating all states of the union to review their statutes in regard to minors' consent for health services. It intends to be all inclusive to give the individual state the option to adopt part or all of this Act whenever it sees fit.

In a democratic nation such as ours, individuals' rights are paramount. In order for everyone, including minors, to have the right of obtaining health services, the balance of this right against others becomes of the utmost importance. This Model Act accepts the concept that getting health services is a basic right. Also, it accepts that parents have their basic right of protecting and promoting the health and welfare of their minors. Therefore, this Act is a compromise and a balance of these two basic rights in the conditions specified. The goal of this Act is to insure that all minors can have quality health services by granting the minors self-consent in conditions and instances that will prevent them from seeking services if parental consent is required and by encouraging health professionals to deliver quality services to minors without incurring legal liability. Reasonable safeguards and limitations are stipulated in this Act to protect the minors' safety and the right of the parent. This Act also emphasizes the promotion of family harmony and minor's maturity.

Whereas, certain minors are not obtaining adequate medical, dental, or other health care due to current legal and medical obstacles,

* This Model Act has been approved by the Council on Child Health of the Academy. It is recommended for enactment in all the states.

Whereas, providers of medical, dental, and other health care are now vulnerable to legal action for giving care to minors,

Whereas, there is a need for coordination, stimulation, and support of access to medical, dental, and other health care for certain minors in need of such care without violating the rights of parents to protect and promote their minors' health,

Be It Enacted by the Legislature of the State of ———, as follows:

Section 1. For the purposes of this act:

(1) "Minor" means any person under the age of majority as defined by the State statute or under 18 years of age, whichever is lower;

(2) "Health Professional" means state licensed physician, psychologist, dentist, osteopathic physician, nurse, and other licensed health practitioner;

(3) "Health Services" means health services specified by the state, appropriately delivered by different health professionals including examination, preventive and curative treatment, operation, hospitalization (admission or discharge), giving or receiving blood and blood derivatives, receiving organ transplantation, pledging donation of organs after death, the use of anesthetics, and receiving contraceptive advice and devices;

(4) The masculine shall include the feminine.

WHEREAS, certain minors are not obtaining adequate medical, dental, or other health care due to current legal and medical obstacles,

The statements presented herein do not preclude alternatives which may be more appropriate, taking into account local situations and all other relevant facts.

Executive Board, AAP

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Section 3. Notwithstanding any other provision of law, the following minors may give consent to health professionals for health services:

1. Any minor who is or was ever married, or has had a child, or graduated from high school, or is emancipated; or

2. Any minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means; or

3. Any minor who professes or is found to be pregnant, or afflicted with any reportable communicable disease including venereal disease, or drug and substance abuse including alcohol and nicotine. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, venereal disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility as the provider of the health service, to counsel the minor by himself or by referral to another health professional for counselling.

The health professional may, but shall not be obliged to inform the parent, parents, or legal guardian of the minor of any treatment given or needed when:

a) in the judgment of the health professional severe complications are present or anticipated; or

b) major surgery or prolonged hospitalization is needed; or

c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public; or

d) to inform them would benefit the minor's physical and mental health and family harmony.

Such information shall be given to the minor's parent, parents, or legal guardian only when the minor consents or when because of the minor's age or condition the attending health professional can reasonably presume such consent.

Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication or any other legal basis of liability. When the minor is found not to be pregnant, or not afflicted with venereal disease, or not suffering from a drug or substance abuse, including alcohol and nicotine, no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this Act, without the consent of the minor.

4. Any minor who has physical or emotional problems and is capable of making rational decisions, and whose relationship with his parents or legal guardian is in such a state that by informing them the minor will fail to seek initial or future help. After the professional establishes his rapport with the minor, then he may inform the parent, parents, or legal guardian unless such action will jeopardize the life of the patient or the favorable result of the treatment; or

5. Any minor who needs emergency care, including transfusions, without which his health will be jeopardized. The parent, parents, or legal guardian shall be informed as soon as practical except in conditions mentioned in subsections 1, 2, 3, or 4 of this section; or

6. Any minor who has had a child may give effective consent to health service for his child; or

7. Any minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

Section 4. No consent of anyone else including parent, parents, custodian, legal guardian, or any court shall be required for any person mentioned in Section 3 except where specified. Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian shall not be liable for payment for such service unless the spouse, parent, parents, or legal
guardian have expressly agreed to pay for such care. The minor so consenting for such health services shall thereby assume financial responsibility for the cost of said services except those who are proven unable to pay and who receive the services in public institutions.

Section 5. If major surgery, general anesthesia, or a life-threatening procedure has to be undertaken on a minor with his consent, it shall be necessary for the physician to obtain approval from another physician for the management except in an emergency in a community where it is impossible for the surgeon to contact any other physician within a reasonable time for the purpose of concurrence.

Section 6. Self-consent of minors shall not apply to sterilization or abortion.

Section 7. No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians if two physicians agree on the health service to be given.

Section 8. Except by specific legal requirement, no information in regard to venereal disease, drug and substance abuse, pregnancy, and emotional illness shall be given by the health professional to another professional, school, law enforcement official, court authority, government agent, spouse, future spouse, employer, or any other person without the consent of the minor, unless giving the information is necessary to the health of the minor and the public and only when the minor's identity is kept confidential.

Section 9. The consent of the minor who represents that he may give effective consent under this Act for the purpose of receiving health services but who may not in fact do so, shall be deemed effective for the purposes of prevention, diagnosis, and treatment required without the consent of the minor's parent, parents, or legal guardian if the person rendering the service relied in good faith upon the representation of the minor.

Section 10. Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment without compensation to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage. For major surgery or any dangerous procedures concurrence of another physician shall, if practical, be obtained.

Section 11. Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

Section 12. Any minor who is examined, treated, hospitalized, or receives health services under this Act may give legal consent, and no person who administers such health services shall be liable civilly or criminally for assault, battery, or assault and battery, or any other legal charge, except for negligence or intentional harm, for treating such minor without advising his parent, parents, or legal guardian.

Section 13. In the event of emergency, either parent or legal guardian may authorize by writing or by telephonic communication with a witness any adult to give consent for a minor who himself is unable to give self-consent for health care for whatever reason.

Section 14. Nothing in this Act shall require any health professional to provide service, nor shall any health professional be liable for such refusal.

Section 15. The Governor shall appoint an Advisory Committee that shall have the responsibility of promoting and encouraging the availability of health services for minors; shall conduct and develop resources of payment, private or public, for the rendering of such services; and shall recommend regulations to carry out the conditions and purposes of this Act.

Section 16. In the event any section, sentence, clause, or provision of this Act shall
be declared invalid by any court of competent jurisdiction, such action shall not affect the validity of the remaining sections, sentences, clauses, or provisions of this Act which shall continue effective.

Section 17. This Act shall become effective immediately upon passage and approval of the Governor.

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