

MEMORANDUM

TO: Chairman/Commissioner Croce

FROM: Brian M. Callahan

RE: Health services for minor inmates

DATE: August 14, 2001

With an apparent increase in the number of minor inmates (for purposes of this discussion, those under eighteen years of age) committed to county jails, questions have been raised by local facility administrators regarding the provision of health services to these minors. Specifically, it has been asked whether a minor inmate may give effective consent to subject himself to health services or whether the consent of a parent is necessary. To clarify this obligation, the following advisory legal opinion is offered. Accordingly, facilities should contact their County Attorney to discuss this matter and the potential liability associated therewith.

The principle statute addressing consent for medical care is Public Health Law §2504. This section states, in pertinent part:

1. Any person who is eighteen years of age or older, or is the parent of a child or has married, may give effective consent for medical, dental, health and hospital services for himself or herself, and the consent of no other person shall be necessary.
2. Any person who has been married or who has borne a child may give effective consent for medical, dental health and hospital services relating to prenatal care.
3. Any person who is pregnant may give effective consent for medical, dental, health and hospital services relating to prenatal care.
4. Medical, dental, health and hospital services may be rendered to persons of any age without the consent of a parent or legal guardian when, in the physician's judgment an emergency exists and the person is in immediate need of medical attention and an attempt to secure consent would result in

delay of treatment which would increase the risk to the person's life or health.

Based upon Public Health Law §2504, the general rule is that persons under 18 years of age cannot consent to the receipt of medical, dental and health and hospital services, and the consent of a parent or legal guardian is required. Such consent is not necessary in emergency situations. Additionally, minors who are parents are treated like adults for decision-making capacity for their own and their children's health care.

Notwithstanding the general rule requiring consent, some statutes specifically permit persons under 18 years of age to receive health services without parental consent. For example, a minor infected with a sexually transmissible disease or exposed to infection with a sexually transmissible disease may be diagnosed and treated. See Public Health Law section 2305(2). Minors are permitted to consent to treatment for outpatient mental health services. See Mental Hygiene Law section 33.21(c) and (d). Minors are also permitted, under certain conditions, to consent to treatment for alcoholism, alcohol abuse, substance abuse or substance dependence. See Mental Hygiene Law section 21.11(c). In addition, minors over the age of 16 may consent to inpatient mental health treatment. See Mental Hygiene Law section 9.13(a).

With regard to the specific types of medical and health services for which consent is necessary, the Public Health Law unfortunately does not define "health services." However, in Alfonso v. Fernandez, 195 A.D.2d 46, 606 N.Y.S.2d 259 (2d Dept. 1993), leave to appeal denied, 83 N.Y.2d 906, 614 N.Y.S.2d 388 (1994), the court held that the distribution of condoms to high school students constituted a "health service" pursuant to Public Health Law §2504. In reaching this decision, the court took considerable note of the New York State Department of Education regulation that defined "health service." Said regulation set forth, in pertinent part, that "[h]ealth service means the several procedures (annual medical examinations, dental inspection and/or screening, vision screening and audiometer tests) designed to determine the health status of the child." 8 NYCRR 136.1(d).

Based upon the decision in Alfonso, it is the opinion of Counsel's Office that a court, in determining what constitutes a "health service" in a local correctional facility, would similarly look at the Commission's Minimum Standards for guidance. Although Part 7010 of the minimum standards is entitled "Health Services", no such definition is provided. Nevertheless, section 7010.2, also titled "Health Services", provides for the physical examination, the delivery of medication and the medical treatment of inmates by the facility physician. As such, it is the opinion of Counsel's Office that a court would likely view any physical examination, delivery of medication or medical treatment of a minor inmate by any physician to constitute a "health service" for which parental consent

may be necessary under Public Health Law §2504. Distinguished from this is the medical screening questionnaire that must be administered by facility staff at the time of admission or prior to the placement of a prisoner in a facility housing unit pursuant to §7002.6 of the minimum standards. Since this questionnaire is provided for under the title “Admissions” and not “Health Services” of the minimum standards, together with the fact that it is not necessarily administered by medical personnel, it is the opinion of Counsel’s Office that, pursuant to Alfonso, a court would not consider the questionnaire a “health service” pursuant to Public Health Law §2504.

With regard to the provision of medications for illnesses which pre-existed the minor's incarceration and for which the minor was receiving prescription medication up until admission to the facility (such as insulin for certain type diabetics, seizure medication for epileptics, and asthmatic medications), it would appear that the minor's parents must have previously consented to the provision of such medications. Nevertheless, in such case, we would urge the facility doctor to obtain and/or verify the inmate's medical history and prescribed medications with the inmate's personal doctor and verify that the parents have consented to such treatment. If it turns out that the minor's parents never consented to such treatment by the personal doctor, it is our further opinion that such consent must be obtained by the facility before providing such medical services to a minor.

Since the foregoing issues have not been dispositively addressed by statute, regulation, or by the courts, facilities are encouraged to discuss this matter with their county attorneys for additional guidance.