



Minor Consent

“An Act Promoting Community Immunity” bill S.1517 (Section 6 and 7), and its companion bill in the house, H.2271, seeks to amend Section 12F of the Chapter 111 of the Mass General Laws to permit health care providers to administer treatments intended for the “prevention” of infectious diseases that any minor is “at risk of contracting.” In essence, the proposed amendments to Section 12F would significantly impair the ability of parents to monitor, be informed of, and consent to medical treatments administered by healthcare providers to their children.

Problems with the Community Immunity Act’s Proposed Amendments to Section 12F:

- ***Radical Change of Law by Not Requiring That Treated Minors Have Mental Capacity to Provide Informed Consent.***

The proponents of the Community Immunity Act have argued in the past that they seek only to clarify already existing law on so-called “mature minors,” citing to Massachusetts case law including Baird v. Attorney General as support for the idea that minors can already consent to “preventative” treatments. Not so. Baird expressly held that the treating physician make a determination that the minor before him or her be of competent capacity to understand medical risks give informed consent to the medical procedure at issue in that case (abortion). Section 12F has no such requirement, which is justifiable only on the basis that this statute is intended to provide for emergency treatments of minors, not preventative treatment.

- Under the amendments to Section 12F proposed under the Community Immunity Act, any preventative treatment could be administered to any minor if that minor were “at risk of contracting” any dangerous infectious disease. At all times, every person (and every minor) is at some level of risk of contracting illnesses. As such, these proposed amendments would permit a health care provider to administer any preventative treatment designed to prevent any infectious disease, including vaccines, to any minor regardless of their capacity to provide informed consent. This is a fundamental departure from established law in the Commonwealth.
- This is particularly troubling for those minors who are in the special needs population.



- ***Risk of Duplicate Preventative Treatments.*** Minors cannot be expected to know all the treatments they have received in the past, and typically parents will be best positioned to confirm whether a particular treatment has been administered to their children at a previous time. Section 12F does not require health care providers to review the medical records of the minor they treat (and absolves them from all liability for harm that may result from treatment they administer pursuant to its terms). Moreover, parents, not knowing that their minor child has received a preventative treatment by a health care provider pursuant to section 12F (as amended by the Community Immunity Act) may consent to duplicative treatments in the future for their minor child.
- ***Parents Will Have No Access to Health Records.*** Absent consent from the minor or a court order, parents will have no access to records of any preventative treatments administered by a provider to their children under these proposed amendments.
- ***Providers are Immunized from Any Liability.*** Providers who administer preventative treatments pursuant to the proposed amendments to Section 12F will be totally excused from any liability for harm resulting from such treatments provided that they rely in good faith on the minor's representations that they are covered by Section 12F. While the good faith reliance requirement may provide some protection against rogue providers administering treatments to minors, it is plainly insufficient — there is no limitation on the provider's ability to solicit the appropriate representation from impressionable minors who are highly likely to defer to figures of authority suggesting that they receive a treatment.
- ***No Prohibition Against Soliciting Minor Consent to Treatment.*** Providers would not be restricted from procuring "consent" from the minor by soliciting the same or explaining, again from a position of authority, that the minor should agree to the preventative treatment.
- ***No Emergency Required.*** The proposed amendments to Section 12F permit treatments for prevention and imposes no requirement that there be any emergent need to administer such care. Therefore, the proposed amendments turn the statute on its head and subvert its intended purpose, which is to give providers the legal authority to assist minors in circumstances where care must be provided on an emergency basis.