

PARENTAL CONSENT IN SCHOOLS FOR STUDENT HEALTH INFORMATION SHEET

In 2023, the Montana Legislature passed House Bill (HB) 676 to generally revise laws regarding fundamental parental rights. HB 676 established a new section of law governing medical care for children (codified under § 40-6-702, MCA). This document provides general information on § 40-6-702, as it relates to student health services and screenings in schools. The information contained in this document does not, and is not intended to, constitute legal advice. Schools are encouraged to consult with their own legal counsel if advice is needed with respect to whether a particular policy, practice, or procedure is compliant with § 40-6-702, MCA.

What does the statute say?

40-6-702. Medical care for children. (1) (a) Except as otherwise provided by Title 41, chapter 1, part 4, or court order, a person, corporation, association, organization, state-supported institution, or individual employee of a corporation, association, organization, or state-supported institution may not:

- (i) procure, solicit to perform, arrange to perform, or perform surgical procedures on a child;
- (ii) procure, solicit to perform, arrange to perform, or perform a physical examination on a child;
- (iii) prescribe or dispense a prescription drug to a child;
- (iv) procure, solicit to perform, arrange to perform, or perform a mental health evaluation in a clinical or nonclinical setting on a child; or
- (v) procure, solicit to perform, arrange to perform, or perform a mental health treatment on a child.

(b) The prohibitions in subsection (1)(a) do not apply if the parent of the child has provided consent for the medical care to be provided. If the parental consent is given through telemedicine, the health professional shall verify the identity of the parent at the site where the consent is given.

(2) Unless a parent's decisionmaking rights have been limited by court order, a hospital, as defined in **50-5-101**, is prohibited from allowing a surgical procedure to be performed on a child in its facilities unless the hospital has first received consent from a parent of the child.

(3) The provisions of this section do not apply when a physician determines that an emergency exists and that it is necessary to perform an activity described in subsection (1)(a) to prevent death or imminent, irreparable physical injury to a child or when a parent cannot be located or contacted after a reasonably diligent effort.

(4) The provisions of this section do not apply to an abortion, which is governed by the provisions of Title 50, chapter 20.

Does the statute apply to private and public schools, including school personnel?

The statute applies to persons, corporations, associations, organizations, state-supported institutions, and individual employees of these entities. § 40-6-702(1).



What is the relationship between the statute and the consent for health services statutes under Title 41, Chapter 1, Part 4 of the Montana Code Annotated?

The statute provides restrictions on medical care for children without parental consent “[e]xcept as otherwise provided by Title 41, chapter 1, part 4. . . .” The statute does not alter the consent for health services statutes, including the allowance for medical care by health professionals in emergencies described in § 41-1-405, MCA. The term “health professional” is defined to include only persons “licensed in Montana as physicians, psychiatrists, psychologists, advanced practice registered nurses, dentists, physician assistants, professional counselors, or social workers.” § 41-1-401(3), MCA.

What do the terms “examination” and “dispense” mean as used in § 40-6-702, MCA?

As used in the statute, the terms are not defined. When a statutory term is undefined, the plain and ordinary meaning of the term generally applies. Schools should consider consulting with their legal counsel on any specific questions concerning the meaning of these terms.

Are there situations where a minor may provide consent for health care services?

Yes. These situations are addressed in [§ 41-1-402, MCA](#) - validity of consent of minor for health services.

Does § 40-6-702, MCA, affect the reporting of communicable diseases?

The statute does not alter Montana statutes and administrative rules governing the reporting of communicable diseases.

How does § 40-6-702, MCA, affect the Department’s school rules set forth under ARM 37.111.801 – 37.111.814?

The Department believes its school rules adhere to the requirements of the statute.

Where can I find examples of school student health policies?

The Montana School Board Association (MTSBA) maintains [policy manuals](#) for School Districts served by MTSBA through their Policy Maintenance Program.

Links to other relevant Montana statutes and Department administrative rules:

Montana Code Annotated

[§ 40-6-701, MCA](#). Interference with fundamental parental rights restricted -- cause of action

[§ 20-5-412, MCA](#). Definition -- parent-designated adult -- administration of glucagon -- training.

[§ 20-5-420, MCA](#). Self-administration or possession of asthma, severe allergy, or anaphylaxis medication.

[§ 20-5-421, MCA](#). Emergency use of epinephrine in school setting.

[§ 20-5-426, MCA](#). Emergency use of opioid antagonist in school setting -- limit on liability.

Administrative Rules of Montana

[DPHHS School Rules \(ARM 37.111.801 – 37.111.814\)](#).

[DPHHS Communicable Disease Control Rules \(ARM 37.114.101 – 37.114.1016\)](#).