



## MINORS' MEDICAL RECORDS AND CONSENT TO CARE

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This *issue brief* provides an overview of minors' rights to deny others access to medical records under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Colorado state law. It also discusses state law pertaining to the ability of minors to consent to medical care.

### HIPAA Privacy Rule and Parents

The HIPAA privacy rule limits unauthorized disclosure of a patient's personal health information. In most situations, parents of an unemancipated minor child are able to access their child's medical records because they are considered to be their child's personal representative. Under HIPAA, a personal representative is someone who is authorized to make health care decisions on another person's behalf.<sup>1</sup>

However, in certain situations, a parent is not considered a child's personal representative unless the minor requests that the parent be treated as such. These circumstances include:

- when a minor consents to care and a parent's consent is not required under the law;
- when a minor receives care, the consent for which is given by a court or other person appointed by a court; or

- when a parent consents to allow a minor and a health care provider to have a confidential relationship.

In spite of these exceptions, HIPAA defers to state law that requires, permits, or prohibits parental access to medical records. In such cases, HIPAA permits a health care provider to exercise professional judgment, consistent with state law, to provide or deny parental access.<sup>2</sup>

The privacy rule includes an additional exception in regard to personal representatives: a health care provider may choose not to treat a parent as a personal representative if the provider reasonably believes, using professional judgment, that it is not in the minor's best interest to treat the parent as the personal representative because the minor has been or may be subject to domestic violence, abuse, or neglect by the parent, or because treating the parent as a personal representative could endanger the child.<sup>3</sup>

### Minor Consent to Care

In Colorado, minors are able to consent to several types of medical treatment under the law. State law specifies that the age of competence "in regard to a minor's body and the body of his issue," is 18 years or older.<sup>4</sup> Further, from a policy standpoint, many laws that allow a minor to consent to medical

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<sup>1</sup>45 C.F.R. Section 164.502 (g)(3)(i).

<sup>2</sup>45 C.F.R. Section 164.502 (g)(3)(ii).

<sup>3</sup>45 C.F.R. Section 164.502 (g)(5).

<sup>4</sup>Section 13-22-101, C.R.S.

treatment address medical situations in which a minor may be less likely to seek treatment if parental consent were required.

### **Minors Living Apart From Their Parents**

Minors aged 15 or older who are living apart from their parents and managing their own financial affairs, regardless of the source of their income, may consent to their own medical care of any kind, as well as to donation of their blood, organs and tissue. Additionally, minors who have contracted a legal marriage may consent to their own medical care or blood, organ, and tissue donation without parental consent.<sup>5</sup> Minors who are parents may also consent to the donation of blood, organs, and tissue for their own children.

### **Minors Receiving Pregnancy-Related and Contraceptive Care**

Minors who are pregnant may consent to pregnancy-related care, and those who are themselves parents may also consent to any medical care for their own children.<sup>6</sup> Minors may obtain contraceptive supplies and information when they are in need of such services or when they have been referred for these services by another doctor, member of the clergy, family planning clinic, school, or agency of the state.<sup>7</sup> However, unmarried minors under the age of 18 may not consent to permanent sterilization procedures without a parent or guardian's consent.<sup>8</sup>

### **Minors Who Are Victims of a Sexual Offense**

When a minor indicates that she or he has been the victim of a sexual offense, the minor may consent to a provider performing the necessary examinations to obtain evidence of the offense, and to receive treatment for any condition caused by the sexual offense. However, the provider is directed by state law

to make a reasonable effort to notify the parents or guardians of the minor in such circumstances of the sexual offense, prior to examining or treating the minor. If the provider is not able to notify the parents or guardians, she or he may still examine and treat the minor. If the parents or guardians object to treatment, the provider may proceed under the Child Protection Act of 1987.<sup>9</sup>

### **Minors Receiving Care for Sexually Transmitted Infections**

Parental consent is not required for a minor seeking diagnosis or treatment of a sexually transmitted infection. Providers may also discuss preventative measures, where applicable. Providers may choose to involve a parent or guardian if the minor seeking diagnosis or care is 13 years old or younger; whether or not the provider chooses to involve the parent, he or she must counsel the minor patient on the importance of involving the parent in the diagnosis or treatment.<sup>10</sup>

### **Minors Receiving Care for Drug Use and Mental Health Services**

Under state law, minors may consent to receive medical treatment for drug use and addiction without the consent or notification of a parent or guardian.<sup>11</sup> In regard to mental health services, a minor aged 15 or older may consent to receive services, but the licensed mental health professional rendering services may, with or without the minor's consent, advise the parent or guardian of the services needed or given. Moreover, under Colorado law, adult family members actively participating in the treatment of a person with mental illness are entitled to access to portions of that person's medical records, including diagnosis, prognosis, need for, anticipated length of, and discharge plan for hospitalization, if relevant, medication administered and medication side effects, and short- and long-term treatment goals.<sup>12</sup>

<sup>5</sup>Section 13-22-103 (1), C.R.S.

<sup>6</sup>Sections 13-22-103 (3) and 13-22-103.5, C.R.S.

<sup>7</sup>Sections 13-22-105 and 25-6-102, C.R.S.

<sup>8</sup>Section 25-6-102 (6), C.R.S.

<sup>9</sup>Sections 13-22-106 and 19-3-301, C.R.S.

<sup>10</sup>Section 25-4-409, C.R.S.

<sup>11</sup>Section 13-22-102, C.R.S.

<sup>12</sup>Sections 27-65-103 and 27-65-121, C.R.S.