



## Minors' Medical Records and Consent to Care

By Julia Group and Vanessa Reilly

This *issue brief* provides an overview of minors' rights to deny others access to medical records under the federal 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

A provision of HIPAA, known as the privacy rule, limits unauthorized disclosure of a patient's personal health information by covered entities. Covered entities include most health care providers, health insurance companies, government health programs like Medicare and Medicaid, and entities that process health information, such as medical billing services. 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>

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, and consent for such care is given by a court or a person appointed by a court; or

- when a parent consents to confidentiality between a health care provider and minor.

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

Under Colorado state law, the age of competence for which someone is permitted to make decisions in regard to his or her own body is 18 years or older.<sup>4</sup> However, minors are able to consent to several types of medical treatment under the law. Many laws that allow a minor to consent to medical treatment address medical situations in which a minor may be less likely to seek treatment if parental consent were required.

<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.

## 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 organs and tissue. Additionally, minors who are married may consent to their own medical care and organ and tissue donation without parental consent. Minors who are parents may also consent to any medical care, as well as donation of organs or tissue for their child.<sup>5</sup>

## Minors Receiving Pregnancy-Related Care, Contraceptive Care, and Abortion Procedures

Minors who are pregnant may consent to pregnancy-related care.<sup>6</sup> Minors may obtain contraceptive information, procedures, and supplies if they request them and 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> Unmarried minors under the age of 18 may not consent to permanent sterilization procedures without a parent or guardian's consent.<sup>8</sup> Parents or guardians of a minor must be notified of a minor's scheduled abortion at least 48 hours in advance of the procedure, but their consent is not required for the procedure to take place.<sup>9</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 provision of the Child Protection Act of 1987.<sup>10</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>11</sup>

## Minors Receiving Care for Substance Use Disorder Treatment and Mental Health Services

Under state law, minors may consent to receive medical treatment for a substance use disorder without the consent or notification of a parent or guardian.<sup>12</sup> In regard to mental health services, a mental health professional may provide outpatient psychotherapy services to a minor who is aged 12 or older if he or she is voluntarily seeking such services and provision of such services is clinically indicated. The consent of the parent or guardian is not required unless the provider believes the minor is unable to manage his or her care, but the provider should discuss and encourage notifying the minor's parent or guardian. Notification of a parent or guardian may occur with the minor's consent and if determined not to be detrimental to treatment. If the minor communicates an intent to commit suicide, the provider shall notify the parent or guardian.<sup>13</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>Section 13-22-704, C.R.S.

<sup>10</sup>Sections 13-22-106 and 19-3-301, *et seq.*, C.R.S.

<sup>11</sup>Section 25-4-409, C.R.S.

<sup>12</sup>Section 13-22-102, C.R.S.

<sup>13</sup>Section 12-245-203.5