



TREATMENT OF MINORS AND THE HANDLING OF THEIR PROTECTED HEALTH INFORMATION (PHI)

Washington State law allows minors under age of 18 to consent to medical care and treatment under certain conditions which are described below. State law allows minors to make decisions about the handling of their PHI when the law allows them to consent for their own treatment. The HIPAA Privacy Rule does not preempt state law in this regard.

A person under the age of 18 cannot consent to medical care unless one or more of the following exceptions apply:

- Emancipation or marriage to spouse over 18
- Emergency medical care
- Birth control
- Pregnancy termination and any medical condition related to pregnancy
- HIV and sexually transmitted diseases (14 or older)
- Outpatient substance abuse (13 or older)
- Outpatient mental health (13 or older)

Documentation: The underlying facts for the application of any of these exceptions should be documented in the medical record at the time of treatment. When consent forms are applicable to these exceptions, such as pregnancy termination, the minor may sign these forms. Due to the minor patient's relative immaturity and lack of sophistication, adequate time needs to be spent concerning these consent issues.

Emancipation: A person under the age 18 who is either emancipated or married to a spouse 18 years or older can consent to his or her own medical care. An emancipated minor is an individual who is free from parental control and is self-supporting.

Emergencies: State law provides that no clinician or hospital is liable for failing to secure consent when rendering emergency medical, surgical, hospital or health services to any individual, regardless of age, where the patient is unable to provide consent for any reason and where there is no other person reasonably available who is legally authorized to give such consent. Emergency care should not be unduly delayed pending attempts to obtain any such consent. If the child's condition could deteriorate, treatment should begin at once and permission to treat should be sought concurrently. Although "emergency" can be defined either broadly or narrowly, we believe the interpretation should be

considered as broader than “life threatening.” For example, in the instance of an upper respiratory infection in a child, we believe that treatment should be started even if consent is not readily available. Although it could be argued that in most cases a delay in treatment of an upper respiratory infection will not cause sequelae, clearly a delay in treatment increases a child’s suffering, and we can’t conceive of an instance where a parent would refuse this care and a court would support such a decision. As in most cases, the issue of determining when to treat without parental or guardian consent requires good judgment and common sense. In cases involving minors, clinicians or hospital personnel should thoroughly chart their efforts to contact the parent or guardian for consent of emergency care. If parental consent is obtained by phone, document it in the chart.

Sexual Activity, Substance Abuse, and Mental Health: Courts and legislatures have granted minors the right to consent to medical care in a number of situations where forced consultation would most likely deter the minor from seeking needed treatment. A minor may consent to medical care relating to birth control, medical conditions relating to pregnancy and pregnancy terminations. Persons 14 years of age or older may give their own consent for medical care relating to HIV or sexually transmitted diseases. Persons 13 years of age or older may give their own consent for outpatient mental health care or the outpatient treatment of substance abuse. However, minors cannot be admitted for inpatient treatment of substance or mental health without parental consent or a commitment order.

Cost of Care: For other than emergency care, parents or guardians are not liable for the cost of care provided without their consent when the minor has the right to consent without consulting the parents. In these instances, each minor need to be informed that he or she will be responsible for paying for services and appropriate arrangements should be made.

Divorced or Separated Parents: For health care of a minor that does require parental consent, the parent or guardian who brings the child to the medical office can provide consent for the child’s care. A parent or guardian can provide consent for the treatment of a minor child regardless of whether the parents are married, unmarried or separated at the time of time of the treatment. This applies whether the parent is the custodial parent or not and whether or not there is a court order affecting the parent’s right to consent to the minor’s medical care. You may treat a minor when one parent provides consent to care even if the other parent demands you not treat the minor, although there may be occasional circumstances where, in your judgment, you choose not to provide care when the parents disagree.

Conclusion: The law concerning treatment of minors has numerous exceptions and nuances, and this article attempts to focus on the most common issues. It does not address the more case-specific problems related to extremely immature minors who may lack mental competence to consent, the court ordered treatment of minors, or the right of minors to refuse medical care. If health care providers use their common sense and their best judgment, with an emphasis on what is best for the patient, the liability risk will be minimized.