



Minors as patients: What PAs need to know

Most PAs have a good sense of requirements related to adult clients, but many find themselves on shakier ground when it comes to care of patients who are minors. To protect yourself from liability, it's important to understand legal and regulatory requirements related to minors.

Minors and privacy

A minor is a person under the age of legal consent, typically younger than 18 years, as defined by state law. How much privacy does a minor have when it comes to sharing personal health information (PHI)? In most states, children can't exercise their rights under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule until they are 18 years old. Until then, a parent, guardian, or other person acting in loco parentis is considered the "personal representative" (a person legally authorized to make health care decisions on an individual's behalf) of the child, so information, including access to the child's health records, is allowed. In addition, the personal representative can authorize sharing information electronically and in print with other healthcare providers.

However, there are three situations where the parent, guardian, or other person acting in loco parentis would not be considered the minor's personal representative:

- The minor is the one who consents to care and the consent of the parent or other person is not required under state or other applicable law.
- A court determines or other law authorized someone other than the parent, guardian, or person acting in loco parentis to make treatment decisions for the minor.
- The parent, guardian, or person acting in loco parentis agrees that the minor and the healthcare provider may have a confidential relationship.

In these situations, the parent may have access to the health records when state or other applicable law requires or permits such parental access. If laws state parental access is not allowed and PAs provide access, your practice could incur financial penalties from \$100 to \$50,000 or more for each violation (capped at \$1.5 million per calendar year). Criminal penalties, including imprisonment, apply when a person knowingly obtains or discloses individually identifiable PHI.

If there is no guidance available from state or other laws, the licensed PA can use professional judgment to the extent allowed by law to grant or deny parental access to the minor's medical information. If child abuse or neglect is suspected and giving the parent access to PHI may put the child at further risk of harm, PAs can choose not to provide the information.

An emancipated minor acts as his or her own personal representative. State courts may grant emancipation, or emancipation may be situational, such as the case of minors who are or have been married, are parents, attend college away from home, or are members of the military.

State laws indicate when and under what conditions children can become independent of their parents for legal purposes. Information about each state can be accessed at www.law.cornell.edu/wex/table_emancipation. The bottom line: Know your state's laws and consult your attorney as needed.

Minors and consent

An emancipated minor or the personal representative of a child can grant consent to treatment. In many states, minors themselves can give consent for treatment related to specific needs, such as substance abuse, mental health care, or birth control.

It's important that PAs conduct due diligence to ensure the person signing the consent is authorized to do so. For example, if the child's parents are separated or divorced, the clinician should ask for a copy of the divorce decree or custody agreement because both parents often have legal custody (and can make treatment decisions) even though one parent has residential custody for the child. A copy of the court order should also be obtained in cases of a legal guardian or guardian ad litem.

The basic principles of obtaining consent should be followed, including a verbal discussion, followed by written documentation. Information should be in the consentor's preferred language and at the appropriate literacy level. Clinicians should document the consent process in the client's health record.

In the case of an emergency, a minor can be treated without consent of the personal representative, but it's important to keep in mind that the burden of proof that treatment was needed will fall on the PA. In this situation, thorough documentation is essential.

Safeguarding your business

Understanding these unique risk management challenges will help you avoid legal action related to treating a minor and sharing PHI.



RESOURCES

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