

RE: Access to Medical Records by a Parent

DATE: August 25, 2015

Relevant laws: §4-301, §4-303, §20-102, HIPAA

([http://www.hhs.gov/ocr/privacy/hipaa/faq/personal\\_representatives\\_and\\_minors/227.html](http://www.hhs.gov/ocr/privacy/hipaa/faq/personal_representatives_and_minors/227.html))

HIPAA generally allows a parent to have access to the medical records about his or her child, as the child's personal representative, as long as such access is not inconsistent with State law. A parent is not considered the minor's personal representative if any of the following circumstances applies.

- 1) The minor consents to care and parental consent is not required under State law;
- 2) The minor obtains care at the direction of a court; or
- 3) If, and to the extent that, the parent agrees that the minor has a confidential relationship with the health care provider.

Maryland law § 4-303 requires the health care provider to disclose a medical record on the authorization of a "person in interest." According to § 4-301, a "person in interest" can include a minor, as long as the medical record concerns treatments that do not require parental consent. If the minor does not have the capacity to consent to the treatment, then the minor's parent, guardian, custodian, or a court-designated representative can assume the role of the "person in interest," **at the discretion** of the attending physician who provides the treatment.

Generally, a minor has the same capacity to consent to treatment as an adult, if the minor is married, a parent, or living separately from the minor's parents or guardian and self-supporting. §20-102. However, Maryland also allows a minor to have the same capacity as an adult if the minor requests any of the following treatments.

- Treatment for or advice about drug abuse;
- Treatment for or advice about alcoholism;
- Treatment for our advice about venereal disease;
- Treatment for our advice about pregnancy;
- Treatment for our advice about conception other than sterilization;
- Physical examination and treatment of injuries from an alleged rape or sexual offense;
- Physical examination to obtain evidence of an alleged rape or sexual offense; and
- Initial medical screening and physical examination on and after admission of the minor into a detention center.

The capacity of a minor to consent to treatment for drug abuse or alcoholism **does NOT** include the capacity to refuse treatment in an inpatient treatment program for which a parent or guardian has given consent.

A minor may also have the capacity as an adult to consent to psychological treatment relating to drug abuse or alcoholism, if the attending physician or psychologist believes that waiting for a parent or guardian's consent would harm the minor's health or life.

If the minor consents to any of the treatments listed above, then **only the minor** may authorize the disclosure of medical records relating to such treatments.

**Parental Notification:**

A licensed health care practitioner **may, but is not required to**, give the minor's parent, guardian, or custodian or the spouse of the parent information about any of the above treatments needed by the minor, **without the consent of the minor or even in spite of the minor's express objection**.

However, a licensed health care practitioner **may NOT** notify the parent, guardian, or custodian information concerning an abortion *without the consent of the minor*.

**Practice Implications**

Due to the sensitive nature of these treatments, it would be prudent to advise parents that under Maryland law, their child may receive treatments for which the medical records may not be disclosed without the child's authorization.