# **Parents and Minors**

**General Rule:** The guidelines for compliance with the HIPAA privacy regulations issued by the Office for Civil Rights indicate that a person's right to control protected health information is tied to the person's right, under state or other applicable law, to control informed consent. Because a parent usually has authority to make health care decisions about his or her minor child, a parent generally is considered a personal representative of the minor child and has the right to obtain access to health information about the minor child.

**Note:**The Office for Civil Rights has indicated that changes will be made to the regulations to permit parental access regardless of state informed consent laws.

**Exceptions:**

* When state or other law does not require consent of a parent or other person before a minor can obtain a particular health care service, and the minor consents to the health care service. In that case, the parent is not the minor's personal representative and cannot obtain access to the minor's protected health information without the minor's authorization.
* When a court or other law authorizes someone other than the parent to make treatment decisions for a minor, the parent is not the personal representative of the minor for the relevant services.

**How Does This Work Under Oregon Law?**

Oregon law references several circumstances when a minor may consent to their own health care without parental involvement, and hence control their own protected health information under the HIPAA privacy regulations.

* A minor 15 years of age or older may give consent to hospital care and medical or surgical diagnosis or treatment by a physician without the consent of a parent or guardian. (ORS 109.640).
* A minor 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder or a chemical dependency. (ORS 109.675). Note, however, that ORS 109.675(2) requires the involvement of the parent by the end of treatment unless the parent has sexually abused the child or the child is emancipated. This poses federal preemption questions that are discussed below.
* A minor of any age may give consent to the furnishing of hospital, medical or surgical care related to the diagnosis or treatment of venereal disease, if the disease is one which is required by law to be reported to the local or state health officer. Parental consent is not necessary. (ORS 109.610).
* Any person, without regard to age, may obtain birth control information and services from a physician. (ORS 109.640).
* Any person 16 years of age or over may donate blood to any blood program without parental consent. (ORS 109.670).

In the circumstances detailed above, the parent cannot act as the minor's personal representative and cannot obtain access to the minor's records without the minor's authorization.

**When a parent may receive otherwise protected information:** Even though a parent may not be able to act as the minor's personal representative in circumstances discussed above, HIPAA allows releases of information to family and friends without consent or authorization in some circumstances.

* Hospitals may give out facility directory information if 1) the patient was told of the hospital's policy and 2) the patient was given a meaningful opportunity to opt out of the directory listing or to restrict some or all of the uses and disclosures that can be included in the directory. The regulations specify exceptions to the "opt out" requirement, including patient incapacity and emergency circumstances. See the Opt Out section of these guidelines for more information.
* Covered entities may disclose protected health information about an individual (including minors) to a person involved in the health care of the individual, such as next-of-kin, other family member or close personal friend. If possible, the individual should be given the opportunity to object to such disclosures. If the individual is not present or otherwise unable to voice an opinion, the covered entity may use its own professional judgment about whether to disclose information. Information released is limited to the information directly related to the person's involvement in the individual's care.

**HIPAA Preemption Questions:**

* Several Oregon laws require release of protected health information to the parents even when the minor retains control of informed consent. For example:

ORS 109.680 allows a physician or other health professional to advise the parent of a minor of a mental health or chemical dependency diagnosis or treatment if doing so will serve the best interests of the minor's treatment because the minor's condition has deteriorated or the risk of a suicide attempt has become such that inpatient treatment is necessary.

ORS 109.675(2) requires a treatment provider to involve the parents in the minor's mental health or chemical dependency treatment before the end of treatment unless the minor has been sexually abused by the parent or the minor is emancipated.

*It is unclear how these provisions will relate to the HIPAA privacy regulations*:

HIPAA requires a patient authorization for release of protected health information for non-treatment purposes (or even for treatment in the case of psychotherapy notes), unless there is an imminent threat to health or safety. As more protective of protected health information, HIPAA would seem to prevail. However, remember that the Office for Civil Rights has indicated they will change the HIPAA privacy regulations to permit parental access regardless of the ability to control informed consent. It appears we all need to wait and see.

* Federal law related to drug/alcohol records requires the minor's consent prior to notifying the minor's parent of his or her application for treatment. The only exception is if the minor lacks the capacity to make a rational decision on the issue of notification, the situation poses a substantial threat to the physical well-being of the minor, and the threat may be alleviated by notifying the parent.

HIPAA is not intended to preempt any other federal law. It will be interesting to see how this law is implemented if the Office for Civil Rights makes the indicated changes allowing greater parental access to minor's records.