



## C06 Clinical- Consent and Treatment of Minors

### **Purpose:**

It is the policy of the Yakutat Community Health Center (YCHC) to recognize the rights of minors and their parents, legal guardian or other legally authorized representative to obtain healthcare in compliance with applicable state and federal law. The process to ensure health care access and privacy is complex relating to minors, and this Policy is designed to help identify which services a minor can obtain without parental consent.

### **Definitions:**

For the purposes of this Policy, the YCHC has determined that it will look to Alaska State Law for guidance on determining age of majority and personal representatives of minors, and for health care decision-making by minors.<sup>1</sup>

Emancipated Minor: An Emancipated Minor is a person who is between sixteen (16) years of age and eighteen (18) years of age and who (a) is lawfully married; or (b) has petitioned and received a declaration of emancipation by a court of competent jurisdiction.<sup>2</sup> An emancipated minor shall be considered to have the power and capacity of an adult, including all rights of an adult patient pertaining to the use and disclosure of PHI. The minor patient has the burden of demonstrating emancipation.

Unemancipated Minor: An Unemancipated Minor is a person under the age of eighteen (18) who is not an Emancipated Minor and is not otherwise treated as an adult under applicable law for purposes of health care decision-making.

Personal Representative: A Personal Representative is a person YCHC has verified has legal authority to act on behalf of the patient in making decisions relating to the patient's health care. This may include parents, legal guardians, conservators, agents appointed through a valid power of attorney for health care, or other individuals designated by applicable law.

### **Procedure:**

#### 1. Emancipated Minors Generally:

If an individual is an Emancipated Minor, YCHC will treat the Emancipated Minor the same as an adult for purposes of health care decision-making, authorization for release of the individual's PHI, and all other rights and responsibilities related to the individual's PHI. The Emancipated

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<sup>1</sup> See, e.g., AS 25.20.010 (defining age of majority as reaching the age of eighteen (18)); AS 25.05.171, 25.20.020, 25.20.171 (arrival at majority on marriage at sixteen (16)).

<sup>2</sup> AS 09.55.590; 25.20.020.



Minor's parent or other person acting in loco parentis shall not be recognized as the minor's Personal Representative.

If doubt exists regarding emancipation, the procedures applicable to Unemancipated Minors should be followed until appropriate documentation of emancipation is provided to YCHC.

## 2. Unemancipated Minors:

Parental, Legal Guardian or Other Legally Authorized Representative Access: The YCHC will treat a parent, guardian or other person acting in loco parentis (hereinafter "Parent") of an Unemancipated Minor as a Personal Representative of the minor patient, with respect to PHI relevant to such personal representation, *except* when the following applies:

- A. When the minor consents to health care service and the consent of a Parent is not required (regardless of whether the consent of another person has also been obtained) by applicable law.<sup>3</sup> In such circumstances, the Parent of that minor will not be treated as a Personal Representative for purposes of the PHI related to that health care service, unless the minor has requested the Parent to be treated as his or her Personal Representative.
- B. When the minor obtains health care at the direction of a court or person appointed by the court, the Parent of that minor will not be treated as a Personal Representative for purposes of the PHI related to that health care service.
- C. When a Parent has agreed that PHI related to a given health care service will be kept confidential between the health care provider and the minor, that Parent will not be treated as the Personal Representative for the purposes of the PHI

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<sup>3</sup> For example:

- *Medical/Dental Services Generally:* Minor may consent when living apart from the minor's Parents and managing his/her own affairs, or when the Parent cannot be contacted or is unwilling to grant or withhold consent. AS 25.20.025(a)(1), (2). Additionally, a minor who is a parent of a child may give consent to medical and dental services for the minor or the child. AS 25.20.025(a)(3).
- *Emergency Care:* See Medical/Dental Services Generally. See also AS 09.65.090 (stating that a person who renders emergency care or counseling to an injured, ill, or emotionally distraught person, who reasonably appears to be in need of emergency aid in order to avoid serious harm or death, is not liable for civil damages as a result of an act or omission in rendering the emergency aid).
- *Family Planning and Contraceptive Services, Pregnancy Care, STD/HIV Services:* A minor may consent to the diagnosis, prevention, or treatment of pregnancy or venereal disease, AS 25.20.025 (see also *Chizmar v. Mackie*, 896 P.2d 196 (Alaska 1995) (HIV information implicitly treated the same as STD/venereal disease information). Note: While AS 18.16.010-.090 requires notification to parents when an abortion is to be performed on an unmarried, unemancipated woman under eighteen (18) years of age, that notification provision in the statute was held unconstitutional by the Supreme Court of Alaska in *Planned Parenthood of the Great Northwest v. State*, 375 P.3d 1122 (2016). As this is a rapidly changing area of the law, please consult with the YCHC Privacy Officer related to minors' privacy and abortion.
- *Substance Use Treatment:* See Medical/Dental Services Generally and the special procedures below.
- *Mental Health Treatment:* See Medical/Dental Services Generally.



related to that health care service. Such an agreement should be documented in the minor's health record.

- D. When the Parent lacks authority to act on behalf of the minor (for example, where parental rights have been terminated).<sup>4</sup>

However, even when the exceptions in subparagraphs A-D apply, you should consult the YCHC's HIPAA Privacy Officer for further instruction, because the Parent may still have access to the Unemancipated Minor's PHI when applicable law requires or permits such parental access. Also, parental access would be denied when applicable law prohibits such access, and if applicable law is silent on a Parent's right of access in these cases, a licensed health care provider may exercise his or her professional judgment to the extent allowed by applicable law to grant or deny parental access to the minor's PHI.

### 3. Special Rules Regarding Substance Use Disorder Treatment (42 C.F.R. § 2.14)

#### Ability to Consent to Treatment:

- a. A Parent's consent is not required for an Emancipated Minor. An Emancipated Minor is treated as an adult for purposes of consenting to substance use disorder treatment.
- b. A Parent's consent is required for an Unemancipated Minor, except as otherwise allowed by Alaska law (see footnote 3).

Communications: When a Parent's consent to substance use treatment is required (see Section A above), a minor's application for such treatment may be communicated to the minor's Parent *only if*:

- a. The minor has given written authorization for the disclosure of the application; or
- b. The minor lacks the capacity to make a rational choice<sup>5</sup> regarding such authorization (e.g., due to extreme youth or mental or physical condition).

#### Authorization for Disclosure:

- a. When the minor patient has the legal capacity to apply for and obtain substance use disorder treatment without needing the consent of a Parent (see Section A above), the YCHC will not disclose the minor's substance use disorder treatment-related PHI when

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<sup>4</sup> However, a non-custodial parent whose parental rights have *not* been terminated has the same access to medical, dental and other records of the minor as the custodial parent. AS 25.20.130.

<sup>5</sup> See 42 C.F.R. § 2.14(c) for more information.



patient authorization is required, without the minor's written authorization. This includes, but is not limited to, any disclosure of patient identifying information to the Parent for the purposes of obtaining financial reimbursement. YCHC is not prohibited from refusing to provide treatment until the minor patient authorizes the disclosure necessary to obtain reimbursement.

a. When a Parent's consent to substance use treatment *is* required (see Section A above), the YCHC will not disclose the minor's substance use treatment related PHI, when patient authorization is required, without obtaining both the minor's and the Parent's written authorization.

b. Any requests for disclosure of a minor's substance use treatment PHI should be reviewed in consultation with the YCHC's Privacy Officer.

#### **4. For Billing Procedure:**

- Confidential services need to be identified by the **provider** by writing "Confidential" across the patient encounter form.
- Then in the case of a patient with private insurance, the billing department will adjust off any unpaid balances of charges when the visit is posted in the patient management system, thereby preventing the charges from being billed. Also, in the case of sliding scale, the cost of the visit will be adjusted off if the minor does not have the means to pay at the time of the visit.

#### **5. Disclosure or patient access to Medical Records:**

- Please see Privacy Policy: 13.0 Minors' Privacy Rights for more information on medical records access and disclosure procedures.