

# Yakutat Community Health Center

## Privacy 13.0-MINORS' PRIVACY RIGHTS 45 C.F.R. §§ 164.502(g), 164.524 and 42 C.F.R. Part 2

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Responsible for Review: Chief Compliance Officer

Scheduled Review Date: 12-1-2019

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### Policy:

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 access, inspect and receive copies of Protected Health Information (PHI) 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, when a parent or minor can access a minor's PHI, and when a minor's consent must be obtained before the YCHC can share the minor's health information. Providers should consult with the YCHC's HIPAA Privacy Officer in cases in which the minor's status or the procedure is not clear.

### 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

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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.

through a valid power of attorney for health care, or other individuals designated by applicable law.

**Procedure:**

**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 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.

**Unemancipated Minors:**

1. **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.

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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.

- 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 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.

2. Requests Made By Unemancipated Minors: An Unemancipated Minor who requests access to his or her own medical record shall, at the time of the request, designate a representative in writing (*e.g.*, a physician or other health representative or responsible person) who would be willing to review the record and inform the minor of its contents.
  - A. On receipt of the request and designation of a representative, the YCHC's Privacy Officer will review the request to determine whether direct access will have an adverse effect on the minor. The minor will be granted direct access to his or her medical record if the Privacy Officer determines that direct access is not likely to have an adverse effect on the minor.
  - B. If the Privacy Officer believes he/she is not qualified to determine, or has determined, that access by the minor is likely to have an adverse effect on the minor, the record will be sent to the minor's designated representative. The minor will be informed in writing that the record has been sent to the designated representative. The minor will be allowed access to his or her record consistent with a determination by the Privacy Officer of the manner of disclosure, if any, that would limit any likely adverse effect on the minor.
3. Situations Involving Abuse, Neglect or Endangerment: YCHC may choose not to treat a person as a Personal Representative of an Unemancipated Minor when YCHC has a reasonable belief that the minor has been or may be subjected to violence, abuse or

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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.

neglect by such person, or that treating the person as a Personal Representative could endanger the patient. In such circumstances, a physician or other health professional must document in writing, in the exercise of his or her professional judgment, that it is not in the best interests of the patient to treat the person as the patient's Personal Representative.

4. **Reaching Majority or Emancipation:** Once a minor becomes emancipated, or reaches the age of majority, the individual has the right to access and authorize the disclosure of her or his own PHI. This includes access to and disclosure of information created while the individual was a minor.

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

##### 1. 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).

##### 2. 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).

##### 3. 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 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.
- B. 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

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

related PHI, when patient authorization is required, without obtaining both the minor's and the Parent's written authorization.

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

Procedures Governing Schools – Proof of Immunization: YCHC may disclose a student's PHI to the student's school or prospective school when all of the following have been met:

1. The PHI is limited to proof of immunization;
2. The school is required by applicable law to have such proof of immunization prior to admitting the student; and
3. YCHC obtains and documents either oral or written agreement to the disclosure from:
  - A. If the student is an Unemancipated Minor, then from the Parent.
  - B. If the student is an Emancipated Minor, then from the student.

Other Rules and Procedures: The YCHC's other rules and procedures related to PHI shall continue to apply, except to the extent inconsistent with or modified by this Policy governing minors.

AUTHORIZED BY: Rhoda Jensen, Executive Health Director

## Patient Request to Inspect or Copy Patient's Own Protected Health Information

You have a right of access to inspect and obtain a copy your PHI that the Yakutat Community Health Center (YCHC) maintains in a designated record set, with limited exceptions. If you request copies of your PHI, YCHC may charge you a fee for such copies, as explained below. To initiate this process, please complete the following information:

Patient name:		
Address:		
City:	State:	Zip:
Phone:	Date of Birth:	

Patient Age: \_\_\_\_\_ The patient is an:  Adult  Emancipated Minor  Unemancipated Minor

**Unemancipated Minors:** If an unemancipated minor is requesting to inspect or copy his or her own medical records, the minor must designate a Personal Representative in writing to receive the records (e.g., a physician, other health representative, or other responsible person) who would be willing to review the record and inform the minor of its contents. The designated Personal Representative is: \_\_\_\_\_  
\_\_\_\_\_. In addition, this form must be approved by the YCHC Privacy Officer before disclosure of an unemancipated minor's records can occur.

My name is \_\_\_\_\_, and I am the

Parent  Guardian  Legal Personal Representative of the patient named above.

### **Information Requested**

Date(s) of Service: \_\_\_\_\_

Type(s) of Service: \_\_\_\_\_

Please describe the exact information that you would like to examine or copy:

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### **Means & Format**

Please indicate the means by which you wish to inspect or obtain a copy of the requested information:

- On-site inspection at the YCHC facility  
 Mail or Email (please provide address: \_\_\_\_\_)  
 Fax (please provide fax number: \_\_\_\_\_)

Other: \_\_\_\_\_)

Please indicate the format in which you would like to receive your requested information:

Paper copy       Electronic copy

Note: If YCHC is not able to readily produce the information in the format you have requested, such information will be made available to you in hard copy or other format that you agree to.

Would you like to receive a *summary* of your PHI instead of access/a copy?

Yes       No

**Fees**

YCHC may charge a reasonable, cost-based fee of \$7.50 to cover the cost of labor, copying (whether in paper or electronic form), and/or postage. The preparation of a summary (as applicable) will cost an additional \$20.00. Do you agree to such fees imposed by YCHC?

Yes       No

If you do not agree to the fee(s), you may withdraw your request or modify your request to reduce the fee.

**Review Procedures**

Your request to inspect or copy your PHI will be reviewed by YCHC's Privacy Officer, who will act on your request within 30 days of receipt (unless we need another 30 days, in which case we will notify you and explain). Such action will either inform you of the acceptance of the request and provide you with the requested access, or provide a written denial explaining the reasons for the denial and whether you are entitled to have the denial reviewed under the YCHC's policies and procedures and applicable law. YCHC may also provide you with alternatives for your consideration. Within the limitations of law, we will make every effort to accommodate your request.

**Patient Signature**

\_\_\_\_\_  
Signature of Patient

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Patient Representative

\_\_\_\_\_  
Date

Relationship of Representative to Patient: \_\_\_\_\_

For YCHC Use Only	
This application was submitted to the Privacy Officer on: _____ (Date)	by: _____ (Employee name)
Privacy Officer Response was submitted to applicant on: _____ (Date)	_____ (Employee name)

For YCHC Use Only

**Procedures:**

Front Desk submits all applications for Patient Request to Inspect or Copy Patient's Own Protected Health Information to the Chief Compliance Officer (CCO) for a determination before releasing any PHI to the patient or personal representative.

Chief Compliance Officer must:

- **Review Privacy Policies:** 13.0 Minor's Privacy Rights; and  
15.0 Patient Right to Access, Inspect and copy Protected Health Information
- **Draft Response letter to patient within 30 days to approve or deny the request (refer to: Forms/Medical Records/ Sample letters)**
- **CCO returns application and letter to front desk to upload into patient record**