

Protected Health Information of Unemancipated Minors: HIPAA Privacy Rule and North Carolina Law

I. Applicable Provisions of HIPAA Privacy Rule

- A. General Rule: When applicable law gives a parent, guardian, or person acting in loco parentis (ILP) the authority to make health care decisions on behalf of an unemancipated minor, a covered entity must treat the parent, guardian, or person ILP as a personal representative for purposes of the privacy rule.

- B. Exceptions: Under the following circumstances, the parent, guardian, or person ILP may *not* be treated as a personal representative. Instead, the minor must be treated as the individual for purposes of the privacy rule.
 - 1. If the minor consents to the health care service and no other consent is *required* by law (regardless of whether such consent has actually been obtained), the parent, guardian, or person ILP may not be treated as the personal representative, unless the minor requests that they be treated as such.

 - 2. If the minor may lawfully obtain care without the consent of a parent, guardian, or person ILP, and the minor, a court, or another person authorized by law consents to the service, the parent, guardian, or person ILP may not be treated as the personal representative.

 - 3. If the minor's parent, guardian, or person ILP assents to an agreement of confidentiality between a health care provider and the minor regarding a health care service, the minor's parent, guardian, or person ILP may not be treated as the minor's personal representative with respect to PHI pertaining to that service.

- C. Notwithstanding the above general rule and exceptions, a covered entity should look to state laws to determine whether and when to disclose an unemancipated minor's PHI to a parent, guardian, or person ILP who is *not* the minor's personal representative.
 - 1. A covered entity may disclose (or provide access to) the unemancipated minor's PHI if an applicable provision of state law permits or requires disclosure.

 - 2. A covered entity may not disclose (or provide access to) the unemancipated minor's PHI if an applicable provision of state law prohibits it.

3. If there is no applicable law relating to a parent, guardian, or person ILP's access to the unemancipated minor's PHI, the covered entity may choose whether to provide or deny such access. The decision to provide or deny access must be made by a licensed health care professional in the exercise of professional judgment, and must be consistent with state or other applicable law.

II. Circumstance: Parent, Guardian, or Person ILP Consents to Minor's Treatment; Minor May Not Consent to the Treatment Under State Law

- A. In most circumstances, an unemancipated minor may not receive medical treatment without the consent of the minor's parent, legal guardian, or person ILP. See G.S. 7B-3400.
- B. In these circumstances, the parent, guardian, or person ILP is the minor's personal representative and ordinarily will have the right to access the minor's PHI.
 1. See the outline, Personal Representatives, for a discussion of the limited circumstances in which a personal representative may be denied access to PHI.

III. Circumstance: Minor Has Authority Under State Law to Consent to Own Treatment

- A. NC law permits minors to obtain medical treatment without the consent of a parent, guardian, or person ILP in certain circumstances.
 1. G.S. 90-21.5(a) provides that an unemancipated minor may give consent for medical treatment for the prevention, diagnosis, or treatment of the following conditions:
 - a. reportable communicable diseases
 - b. pregnancy
 - c. abuse of controlled substances or alcohol
 - d. emotional disturbance
 2. Limitation: The minor may not consent to sterilization, abortion, or admission to a 24-hour mental health or substance abuse facility (except that the minor may consent to admission to such a facility in an emergency).
- B. If an unemancipated minor consents to care under this provision of law, the parent, guardian, or person ILP is not the minor's personal representative for purposes of the privacy rule, unless the minor requests that they be treated as such. A covered entity must look to state law to determine whether a parent, guardian, or person ILP can obtain access to the minor's PHI in this circumstance.

- C. Confidentiality of minors' PHI when minor consents to treatment:
1. G.S. 90-21.4(b) provides that information about treatment that was provided to an unemancipated minor pursuant to G.S. 90-21.5 should not be disclosed to the minor's parent or legal guardian except in the following two circumstances:
 - a. If release of the information is essential to protect the life or health of the minor, the physician *should* release the information.
 - b. If the parent or legal guardian contacts the physician and asks about the treatment or about medical services being provided to the minor, the physician *may* release the information.
 2. The HIPAA privacy rule defers to state law on this issue. Therefore, PHI pertaining to an unemancipated minor's treatment for the issues contained within G.S. 90-21.5 should only be disclosed to the minor's parent, guardian, or person ILP with the minor's authorization or as provided in G.S. 90-21.4(b).