

# **HEALTH CARE FOR MINORS: INFORMED CONSENT AND CONFIDENTIALITY LAWS**

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## **Informed Consent**

Individuals under the 18 years of age are minors under Vermont law [1 V.S.A. § 173]. Therefore, a minor's parent or guardian must provide informed consent for the minor to undergo medical treatment or a procedure with the following exceptions:

### **Minors of any age**

- An individual of any age (including minors) may be treated without informed consent in an emergency [12 V.S.A. § 1909(b)].
- Minors of any age may give informed consent to:
  - Medical treatment associated with rape, incest, or sexual abuse. Health care providers are required to report such incidents to the Department for Children and Families within 24 hours [33 V.S.A. § 4911 et seq.].
  - Outpatient mental health treatment, including psychotherapy and counseling services, but not prescription drugs [18 V.S.A. § 8350].
  - Reproductive care, including contraceptive devices, termination of pregnancy, prenatal, delivery, and other pregnancy care [18 V.S.A. § 9493].

### **Minors 16 years of age and older**

- Minors who are 16 years of age and older may consent to donate blood to a voluntary blood donation program where no compensation is received [18 V.S.A. § 9].

### **Minors 14 years of age and older**

- Minors who are 14 years of age and older may apply for voluntary admission to a designated hospital for mental health related evaluation and treatment. Informed consent must be in writing and must include a representation that the person (a) understands that treatment will involve inpatient status, (b) desires to be admitted to the hospital, and (c) consents to voluntary admission without coercion or duress [18 V.S.A. § 7503].

### **Minors 14 years of age and younger**

- Minors under 14 years of age may admit themselves to a hospital for mental health-related treatment by providing their own written informed consent and a written application from a parent or guardian [18 V.S.A. § 7503].

### **Minors 12 years of age and older**

- Minors who are 12 years of age and older may give informed consent to testing and treatment for sexually transmitted diseases including HIV and AIDS, substance use, or substance use disorder. But, if a minor requires immediate hospitalization for treatment of any of these conditions, the parents shall be notified of the hospitalization [18 V.S.A. § 4226].

## **Confidentiality & Insurance Communications**

Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, unless modified by State or other law, a minor who has the authority to consent to a health care service has the same authority to restrict the use and disclosure of the minor's protected health information (PHI) related to that service as if the minor were an adult [45 CFR § 164.502(g)(3)].

The HIPAA Privacy Rule requires that covered entities (including health insurance plans) permit an individual to request that the covered entity restrict uses or disclosures of PHI about the individual to carry out treatment, payment, or health care operations [45 CFR § 164.522(a)(1)(i)(A)]. A health insurance plan may, but is not required to, agree to a requested restriction, except that a health insurance plan must accommodate reasonable requests by individuals to receive communications of PHI from the health insurance plan by alternative means or at alternative locations if the individual clearly states that the disclosure of all or part of that information could endanger the individual [45 CFR § 164.522(a)(1)(ii); 45 CFR § 164.522(b)(1)(ii)].

The above information outlines the basic tenets of a minor's authority to restrict the use or disclosure of the minor's PHI related to a health care service (where the minor has the authority to consent to the health care service without a parent or guardian's consent) and why the minor may therefore request changes to how health insurance plan communications about that service are received. It is important to note that an individual's ability to restrict uses or disclosures of PHI under the HIPAA Privacy Rule is limited by numerous exceptions and conditions under both federal and State law, which are not included in this overview.