

## Massachusetts Laws Regarding Adolescent Consent to Treatment and Privacy

### **Authorized representatives and special considerations regarding consent for minor patients**

Under HIPAA, a patient's authorized representative is anyone who is authorized under state law to act on the patient's behalf in making health care related decisions. See **45 C.F.R. §164.502(g)(1)**. Where the patient is a minor, the minor's parent, guardian, custodian or someone designated under a caregiver authorization affidavit (hereafter, "parent or guardian") would typically be considered the minor's authorized representative. (See **Appendix E** for a sample Caregiver Authorization Affidavit.) Accordingly, a minor's parent or guardian can *generally* obtain, or consent to the disclosure of, the minor's protected health information without the minor's knowledge or consent. There are exceptions to this general rule. As discussed above, a minor's parent or guardian is never treated as the minor's authorized representative with respect to the minor's substance use disorder treatment information. A covered substance use disorder treatment provider must obtain the minor's consent to disclose such information to the parent or guardian or to a third party. **42 C.F.R. §2.14**.

HIPAA uses the term "personal representative" to refer to what is commonly referred to as an authorized representative.

In addition, if under state law a minor can consent to their own medical treatment, then the minor alone has the right to consent to release of information concerning that treatment. **45 C.F.R. §164.502(g)(3)**. Under Massachusetts law, a minor can consent to their own medical treatment and therefore holds the authority to consent to release of information regarding medical treatment under the following circumstances:

- *Treatment for substance use disorder.* A child 12 or older may consent to treatment for substance use disorder (other than methadone maintenance therapy). See **G.L. c.112, §12E; 110 CMR 11.08(1)**.
- *Inpatient mental health treatment.* Youths 16 or older may commit themselves to a mental health facility. See **G.L. c. 123, §10; 104 CMR 27.06(1); 110 CMR 11.16(2)**.
- *Diseases dangerous to the public health and sexually transmitted diseases.* Children who believe they have contracted a dangerous, contagious disease, may consent to their own treatment. See **G.L. c. 112, §12F; 110 CMR 11.09**. Similarly, a child may consent to treatment for sexually transmitted diseases. See **110 CMR 11.10**.
- *Pregnant teens.* A minor who is pregnant or believes she is pregnant may consent to her own medical and dental treatment, except abortion which can be obtained with judicial approval. See **G.L. c. 112, §12F; 110 CMR 11.06**. This provision is not limited to pregnancy-related treatment but covers all medical and dental treatment during pregnancy.
- *Parenting teens.* Minor parents may consent to their own medical and dental treatment. See **G.L. c. 112, §12F**. Minor parents may also consent to medical and dental treatment for their children. See **G.L. c. 112, §12F**.
- *Family planning services.* A minor may consent to family planning services. See **G.L. c. 111, §24E; 110 CMR 11.05(3)**.

Under each of these circumstances, the minor's parent or guardian is not treated as the minor's authorized representative. Accordingly, the parent or guardian cannot authorize the disclosure of information related to the service on the minor's behalf. See **45 C.F.R. §164.502(g)(3)(i)**. Instead, the provider must obtain the minor's consent to disclose information to a third party.

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