



# **VIRGINIA MINORS' LEGAL RIGHTS: RIGHT TO CONSENT TO TREATMENT; ACCESS TO & DISCLOSURE OF CONFIDENTIAL RECORDS OF OUTPATIENT TREATMENT**

## **I. RIGHT TO CONSENT TO TREATMENT :**

**Virginia Statute § 54.1-2969. . . E.** A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be reported;
2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization;
3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.2-100 ; or
4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

## **II. ACCESS TO RECORDS :**

**A. Access by Minor :**(1) **Virginia Statute § 54.1-2969. . . E . . .** A minor shall also be deemed an adult for the purpose of accessing . . . medical records related to subdivisions 1 through 4 [above]

### **(2) Virginia State Agency Regulation 12VAC35-115-90**

. . . B. Except in the following circumstances, minors must have their parent's or guardian's permission before they can access their record:

1. A minor may access his services record without the permission of a parent only if the records pertain to treatment for sexually transmitted or contagious diseases, family planning or pregnancy, outpatient care, treatment or rehabilitation for substance use disorders, mental illness or emotional disturbance, or inpatient psychiatric hospitalization when a minor is 14 years of age or older and has consented to the admission. . . .

### **B. Access by Parent :**

**(1) Virginia Statute § 20-124.6A.** Notwithstanding any other provision of law, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child unless otherwise ordered by the court for good cause shown or pursuant to subsection B.

B. In the case of health records, access may also be denied if the minor's treating physician or the minor's treating clinical psychologist has made a part of the minor's record a written statement that,



in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. If a health care entity denies a parental request for access to, or copies of, a minor's health record, the health care entity denying the request shall comply with the provisions of subsection F of § 32.1-127.1:03 . The minor or his parent, either or both, shall have the right to have the denial reviewed as specified in subsection F of § 32.1-127.1:03 to determine whether to make the minor's health record available to the requesting parent. . . .

**(2) Virginia Statute § 54.1-2969. . . K.** Nothing in subsection E shall prevent a parent, legal guardian or person standing in loco parentis from obtaining (i) the results of a minor's nondiagnostic drug test when the minor is not receiving care, treatment or rehabilitation for substance abuse as defined in § 37.2-100 or (ii) a minor's other health records, except when the minor's treating physician or the minor's treating clinical psychologist has determined, in the exercise of his professional judgment, that the disclosure of health records to the parent, legal guardian, or person standing in loco parentis would be reasonably likely to cause substantial harm to the minor or another person pursuant to subsection B of § 20-124.6.

**(3) Virginia State Agency Regulation 12VAC35-115-90. . . B. . . . 2.** A parent may access his minor child's services record unless parental rights have been terminated, a court order provides otherwise, or the minor's treating physician or clinical psychologist has determined, in the exercise of professional judgment, that the disclosure to the parent would be reasonably likely to cause substantial harm to the minor or another person.

**(4) HIPAA –** Parental access may be denied if treating physician or clinical psychologist documents that this would cause harm. ( §B164.524(a)(3)(5) **Federal Substance Abuse Regulations –** (see Authorization for Disclosure, below)

### **III. AUTHORIZATION FOR DISCLOSURE OF RECORDS:**

(Outpatient Mental Health, Substance Abuse, Family Planning, Pregnancy)

#### **STATE LAW**

##### **Virginia Statutory Law:**

**§ 32.1-127.1:03, ¶D,1** Providers may disclose records "pursuant to the written authorization of (i) the individual or (ii) in the case of a minor, (a) his custodial parent, guardian, or other person authorized to consent to treatment of minors pursuant to § 54.1-2969, **or** (b) the minor himself, if he has consented to his own treatment pursuant to § 54.1-2969.

**§ 54.1-2969. . . E . . .** A minor shall also be deemed an adult for the purpose of . . . authorizing the disclosure of medical records related to subdivisions 1 through 4 [see above] . . . .



## **Virginia State Agency Regulations:**

**12VAC35-115-90, 1B, 5:**a. "Section 54.1-2969 E of the Code of Virginia [see above] permits a minor to authorize the disclosure of information related to medical or health services for a sexually transmitted or contagious disease, family planning or pregnancy, and outpatient care, treatment or rehabilitation for substance use disorders, mental illness, or emotional disturbance.

## **FEDERAL LAW**

### **HIPAA**

**45CFR Subpart E, 164.524(a)(3)**The general rule under HIPAA is that the minor's parent or guardian exercises the minor's privacy rights. In other words, the parent or guardian would receive the privacy notice required by HIPAA, give consent for releasing the minor's mental health information, and have the right to access and amend treatment records.

If a minor has consented to treatment under a state law that allows for it [as in Virginia], the Privacy Rule generally lets the minor exercise his or her own privacy rights [i.e., right to receive a "Notice of Privacy Practices; right to access records; right to receive an accounting of all disclosures; right to request amendment of records, right to control disclosures, etc.].

(from APA Legal & Regulatory Affairs Staff)

## **Federal Substance Abuse Statute & Regulations**

### **Federal Regulations: 42CFR, Part 2 Subpart B, Section 2.14: Minor Patients**

(b) State law not requiring parental consent to treatment. If a minor patient acting alone has the legal capacity under the applicable State law [as in Virginia] to apply for and obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C ["Disclosures With Patient Consent" ] of these regulations may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a State or local law requiring the program to furnish the service irrespective of ability to pay.