

Minors in Healthcare: Consents and Privacy of PHI


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Compliance Chaos



Omnibus Rule
HIPAA Privacy
State Regulations
HIPAA Security
HITECH Act
CURES Act
Organization Policies

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Access to Medical Records

- Patients have the right to access most portions of their medical records
 - HIPAA 45 CFR § 164.524
- Denying access could lead to patient complaints to OCR
 - Information blocking for electronic data as of 2021!!
- Omnibus rule requires to you respond within 30 days
 - Or provide an explanation for the delay
 - Denials must be documented and explained to requestor
- CURES Act requires information to be available immediately upon request electronically



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Release of PHI Authorization

- Must provide a written authorization which includes
 - Specific information being requested
 - Patient's name
 - Date of the request
 - The entity receiving the information
 - Date of expiration of the authorization
 - The right to revoke the authorization in writing
- Must take reasonable steps to verify the identity of the requestor
 - HIPAA doesn't specify how this verification must be done
 - Policies are great!
- Sample-
<https://library.ahima.org/PdfView?oid=107108>

Appendix A
Sample Authorization Form

(Healthcare Facility Name) Patient Authorization for Disclosure of Health Information:

Patient Name: _____ Date of Birth: ____/____/____
 Address: _____ City: _____ State: _____ Zip: _____
 E-mail Address: _____ Phone: _____

I request that my protected health information (PHI) from (healthcare facility name) be disclosed to:

Recipient Name: _____
 Address: _____ City: _____ State: _____ Zip: _____
 E-mail Address: _____ Phone: _____

Fax (healthcare provider only): _____

I authorize the following PHI to be released from my medical record(s): Emergency Room Record Laboratory Report(s) Radiology Report(s) Pathology Report Immunization Record
 Abstract Summary (includes Discharge Summary, History & Physical, Operative Report(s), Consultations, and Test Results)
 Test Results of: _____
 Radiology film imaging studies/tracing/media
 Biometric Billing Records
 Other: _____

I understand that the information in my health record may include information relating to sexually transmitted disease (STD), acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment of alcohol or drug abuse.

State and federal law protect the following information. If this information applies to you, please indicate if you would like this information released/obtained (include date where appropriate):

Alcohol, Drug, or Substance Abuse Records ☐ Yes ☐ No Date: _____
 HIV Testing and Results ☐ Yes ☐ No Date: _____
 Mental Health ☐ Yes ☐ No Date: _____
 Psychotherapy Records ☐ Yes ☐ No Date: _____

Covering the period of healthcare from: Specific Date(s): _____ to _____ OR _____
 All past, present and future encounters/visits.

Purpose for requesting information: Legal Insurance Personal Continuation of Care Other (please specify other on line below): _____

Disclosure Format (Paper is default if not marked.): US Mail – paper format Fax (healthcare provider only)
 E-mail (secure format) E-mail (nonsecure format, i.e., Gmail, Yahoo) CD/Flash drive – secure format Other (please specify): _____

By signing this authorization form, I understand that:

- Request for copies of medical records are subject to reproduction fees in accordance with federal/state regulations.
- I have the right to revoke this authorization at any time. Revocation must be made in writing and presented or mailed to the Health Information Management Department at the following address: (ADDRESS) Revocation will not apply to information that has already been disclosed in response to this authorization.
- Unless otherwise revealed, this authorization will expire on the following date/condition: _____ If I fail to specify an expiration date/condition, this authorization will expire one year from the date signed.
- Termination, payment, enrollment or eligibility for benefits may not be conditioned on whether I sign this authorization.
- Any disclosure of information carries with it the potential for unauthorized gathering, and the information may not be protected by federal confidentiality rules.
- Marketing: Financial information has been received by a third party for marketing purposes. (Only required if applicable to the organization.)
- Sale of PHI: Remuneration is received for disclosure of my health information. (Only required if applicable to the organization.)

Patient or Authorized Representative Signature: _____ Date: _____

Print Name: _____ Relationship to Patient (if applicable): _____

(For Office Use Only)
 Account Number: _____ Medical Record Number: _____

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HITECH Requests from Patients

- HITECH Act implemented in 2010 includes language regarding electronic requests for records
 - CD
 - Flash Drive
 - Secure Email
- Requests can **only come from the patient** and must include:
 - Patient Name
 - Date of birth
 - Request for records in electronic form only
 - What records should be included
 - Where to deliver
 - Signature
- Can only charge the **actual cost of production** OR **flat fee not to exceed \$6.50**
 - If you do not choose the flat fee, the fee must be disclosed to the patient



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HITECH Requests from Patients

Dear Records Custodian:

I am a patient of [HOSPITAL or DOCTOR name]. My birth date is _____. I request copies of every page of my medical and billing records in **electronic form only**. Such records include, but are not limited to, admission records, history and physical notes, operative notes, discharge summaries, nurses' notes, radiological films, billing records, and outside records. Please provide these records in electronic form on CD in the Adobe PDF format, and send them to me at the following address:

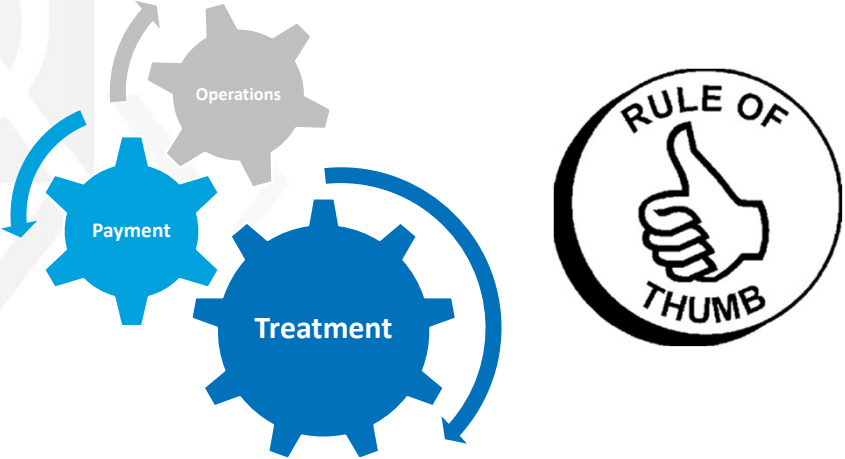
_____.

Sincerely,



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When to Release **Without** Patient Authorization



Full List of Do's and Don'ts: 45 CFR 164.501
<https://www.gpo.gov/fdsys/pkg/CFR-2003-title45-vol1/xml/CFR-2003-title45-vol1-sec164-501.xml>

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When to Release **Without** Patient Authorization

- Compliance activities
- Utilization review
- Health care fraud and abuse detection
- Public health reporting requirements
 - Oklahoma list of conditions:
 - Measles
 - Rabies
 - West Nile
 - STIs
 - Coronavirus

Minimum Necessary!

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Can I Charge for Release of PHI?

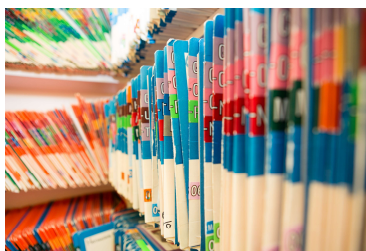
- **Federal Regulations**
 - Must only charge a reasonable charge
 - You may charge a maximum of \$6.50 for HITECH patient requests
- **Oklahoma Regulations**
 - 76 Okla. Stat. § 19
 - **Paper** records
 - 50 cents each page
 - \$5.00 each x-ray or other image
 - No cap
 - **Electronic** records in **digital form**
 - 30 cents each page
 - Cap of \$200
 - Cannot charge postage but can charge a delivery fee
 - **Attorney, insurance company, and subpoena requests**
 - Can charge base fee of \$10 in addition to per page charges
 - May charge the cost of postage/delivery
- **Cannot** charge for labor in Oklahoma
- Must inform patient in advance a fee may be charge with an approximate cost



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What About Paper Records?

- If a patient requests their records electronically and you are still on paper or in a hybrid environment:
 - HITECH requires you to provide ALL records, even paper, electronically.
 - Cannot charge paper fees, electronic fee only
 - \$6.50 maximum or 30 cents per page



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CONSENT FOR MINORS



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Oklahoma Age of Majority

- 15 O.S. sec. 13
- Minors defined - Computing period of minority.
 - Minors, except as otherwise provided by law, are persons under eighteen (18) years of age.
 - The period thus specified must be calculated from the first minute of the day on which a person is born to the same minute of the corresponding day completing the period of minority.
- In most scenarios a parents MUST consent for medical treatment of the minor



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Can A Minor Consent to Their Own Treatment?

- Oklahoma Health Services for Minors Act (63 O.S. sec. 2601 et seq.)
 - Long, inconsistent, not clear in many sections
- **Legal status** can determine if they can self-consent:
 - 6 legal scenarios in which a minor can self-consent:
- The **type of care** being provided can determine if they can self-consent:
 - If the minor is seeking out care without a parent present
 - 6 treatment scenarios in which a minor can self-consent
- Full medical consent vs. limited consent



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LEGAL STATUS FOR MINOR SELF-CONSENT



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Minors Can Grant Full Self-Consent **IF:**

1. The minor is or has served in the US military
 - You can enlist at the age of 17
2. The minor is legally emancipated
 - You need to get a copy of the court order to verify this
3. The minor is living apart from parents **and** they are **not** supported by their parents
 - How would you verify this?
 - No legal precedence for this scenario
4. The minor is legally married
 - If two minors are married to each other, the spouse can consent for the patient if the patient can't consent due to physical or mental incapacity



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Minors Can Grant Consent for a CHILD **IF:**

1. A minor who is a parent can consent to the treatment of their child
 2. A minor who has a legally dependent child can consent to the treatment of their dependent
 - Not many reliable ways to verify this information, but fortunately not a common scenario
- **IMPORTANT NOTE-** While the minor can consent to care for their child/dependent- this does **not** change that a parent must still consent for the care of the minor themselves unless the minor's care falls under one of the Minors Act exemptions



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TREATMENT TYPE FOR MINOR SELF-CONSENT



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Treatment Types Minors Can Self-Consent To

1. Emergency Care
 - Provider is **required** to make a “reasonable attempt to inform” the minor's parents, spouse, or legal guardian
 - This does **not** mean consent, just to inform them of the treatment needed
 - Contraception is NOT an emergency
2. Pregnancy Related Care
3. Reportable Communicable Diseases
4. Victims of Sexual Assault
 - Can only consent to a forensic medical exam
5. STI Exam or Treatment (63 O.S. sec. 1-532.1)
6. Inpatient Substance Abuse or Mental Health Treatment
 - Must be 16 or older
 - For inpatient services only

Consent is
limited to the
allowable
condition
ONLY

Everything Else in Oklahoma Requires a Parent Consent!!!



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Examples

- Mary is 14 and tells her physician she would like to be placed in outpatient treatment for her opioid addiction. Can she consent to this treatment herself?
 - **No parental consent is required**- Mary must be 16 and the treatment would have to be inpatient
- John is 16 and goes to his family physician alone to be tested for gonorrhea. He tests positive and receives treatment. A few days later, his parents find his antibiotics and call the physician demanding to know what they are for. Can the physician tell them?
 - **No**- Oklahoma law protects the privacy regarding self-consent for exam and treatment of STIs for minors



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Examples

- Suzy (13 yo) and her mother go into the family physician together for Suzy's annual well child visit. In her blood work, it is discovered Suzy has an STI. Can the physician tell Suzy's mother?
 - **Maybe**- very gray legal area. Your organization should include in your policy's how to handle these situations.
- Nora (16 yo), her daughter Jessie (1 yo), and Nora's father, Joe go to the family physician for flu shots. Who can consent to the minors vaccines?
 - Nora will consent for Jessie as it is **her child and she has parental rights**
 - Joe will have to consent for Nora as **she is still a minor**



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Examples

- Bob goes to his family physician alone to be treated for an STI. While there, he asks the doctor if he can also prescribe him some allergy medication. Can the doctor treat Bob for both conditions?
 - **No**- the minors self-consent is limited to the treatment of the STI. A parent would have to consent to the allergy treatment.
- Ellen is 17 and about to leave for basic training in the Army. She goes to her family physician for an annual wellness visit to ensure she is healthy and discuss starting allergy medication. Can Ellen consent to this visit?
 - **Yes**- even though she is a minor, she is enlisted in the US military and therefore by legal status can self-consent to full treatment



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WHEN CAN I RELEASE PHI FOR MINORS?



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Release of PHI: What HIPAA Privacy Rule Says

- The parent is generally considered to be the “personal representative” of the minor patient and therefore has access to their PHI unless:
 - The minor alone consented to the treatment (defer to state law)
 - Care was given at a court’s discretion
 - The parent agreed to allow their child to speak confidentially with the provider
- In all other cases defer to state law on minor treatment disclosures



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Release of PHI: Parental Rights

- PHI can be released to a parent if they have parental rights
 - Don’t confuse custody with parental rights!
 - Legal custody vs. physical custody
 - To block a parent from seeing PHI in Oklahoma- a court order is required.
- Stepparents' rights extend only as far as the extent of care authorization from a parent who has parental rights



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Release of PHI: Minors Who Self-Consent

- If consent for care of the minor was obtained through self-consent of the minor:
 - The PHI specific to those encounters **CANNOT** be released to anyone without the minor's authorization.
 - If limited consent- the PHI is limited only to the condition being covered. The rest of the record can be viewed by the parent.



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COMMON MINOR PRIVACY ISSUES



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Minor Privacy Issues

- EHR Patient Portal Access
 - Every software is different
 - Contact your vendor to see how/if yours can be customized.
 - If your patient portal cannot keep these portions of the record confidential
 - Provider needs to let the minor know the information will be pushed to the portal and their parents may see it
 - Give them the option for a referral to a provider who can provide the treatment more confidentially



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Minor Privacy Issues

- Inadvertent disclosures through EOBs
 - Let the minor know their parent will get a copy of the EOB which could reveal information about the visit

Date	Place of Service	Rendering Doctor	Code	Description	Amount
6/24/2018	ALTA BATES MEDICAL CTR IP	[REDACTED]	59151 00840	LAPAROSCOPIC TREATMENT OF ECTOPIC PREGNANCY; WITH	\$1,495.00
8/13/2018				INSURANCE BILLED (BLUE CROSS OF CA)	
8/21/2018				BC PAYMENT	(\$842.40)
8/21/2018				BC LOA	(\$559.00)
9/14/2018				INSURANCE BILLED ()	
10/23/2018				INSURANCE BILLED (OXFORD INSURANCE CO)	

Patient: John A. Doe # W1234567891

Medical Services Detail		Your Provider Billed	Member Benefit			Amount Your Provider May Bill You					Reason Code (See below)
Claim #			Allowed Amount	Member Savings	Your Plan Paid	Copayment	Deductible	Coinsurance	Other Liability	TOTAL	
Claim #: 01-102510-046-40											
Provider: JOHN SMITH		\$875.00	\$600.00	\$275.00	\$0.00	\$0.00	\$600.00	\$0.00	\$0.00	\$600.00	
Date(s): 11/21/2011-11/21/2011		Service: MEDICAL CARE									



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Minor Privacy Issues

- Can a minor request that a parent not hear their responses to questions?
 - A parent as the right to say no since they brought the child to the visit
 - If a parent grants permission
 - Document thoroughly permission
 - Have a permission form for the parent to sign
 - Ask the parent to step out of the room



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Thank You!!!

Email: dflood@OFMQ.com

Call: 405- 517-2919

Visit: www.OFMQ.com



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