Consent and Confidentiality

When The Patient Is A Minor

Consent as an Adult

Ala Code § 26-1-1
Age of majority designated as 19 years.
(a) Any person in this state, at the arrival at the age of 19 years, shall be relieved of his or her disabilities of minority and thereafter shall have the same legal rights and abilities as persons over 21 years of age. No law of this state shall discriminate for or against any person between and including the ages of 19 and 21 years solely on the basis of age.

Consent in Emergency

Ala. Code § 22-8-1
Persons physically or mentally unable to consent.
No consent required when:
Person is either physically or mentally unable to consent
Has no known relatives or legal guardian
Two or more licensed physicians, psychiatrists or psychologists, after consultation, indicate, in writing, that medical services are necessary, and any attempt to secure consent from court or to locate unknown relatives would result in delay of treatment which would increase the risk to the person's life or health.

Consent in Emergency Without Parent

Ala. Code § 22-8-3
When physician may proceed without consent of parent.
In the physician's judgment, an attempt to secure consent would result in delay of treatment which would increase the risk to the minor's life, health or mental health.

Consent for Minors

What are the laws in Alabama?

Consent Without Parent

Ala. Code § 22-8-4
When minor may give consent generally.
14 years of age or older
Graduated from high school
Is married or divorced
Is pregnant
"...and the consent of no other person shall be necessary."
Consent for Child

Ala. Code § 22-8-5
Consent of minor for self and child.
Any minor who is married, or having been married is divorced or has borne a child may give effective consent to any legally authorized medical, dental, health or mental health services for himself or his child or for herself or her child.

Other Consent Statutes

Ala. Code § 22-8-2: Missing Spouse Consent
Ala. Code § 22-8-8: Consents are cumulative
Ala. Code § 22-8-9: Consent for Donation of Bone Marrow

Consent for Certain Treatment

Ala. Code § 22-8-6
Consent of any minor as to pregnancy, venereal disease, drug dependency, alcohol toxicity and reportable diseases.
Testing or Treatment
Pregnancy
venereal disease
drug dependency
alcohol toxicity
any reportable disease
“...and the consent of no other person shall be deemed necessary.”

Consent By Non-Parents

- Patient/Child if meeting the requirements of Alabama consent statutes
- Legally appointed guardian
- Ala. Code § 26-2A-7: Temporary guardian, if:
  - Parent(s) delegate powers;
  - Executed Power of Attorney;
  - For no more than one year

Effective Consent

Section 22-8-7
Effect of minor’s consent; liability of physicians, etc.; waiver of rights or causes of action.
(a) The consent of a minor who professes to be, but is not, a minor whose consent alone is effective to medical, dental, health or mental health services shall be deemed effective without the consent of the minor’s parent or legal guardian if the physician or other person relied in good faith upon the presentations of the minor.

Consent By Divorced Parents

- Absent court order specifying otherwise, or one parent giving up parental rights, either parent may provide effective consent
Who can have access to the minor patient’s records?

HIPAA Privacy Rule

CFR 45 § 164.502(g)(1) Uses and disclosures of protected health information: general rules
- “a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter”
- (g)(3) – unemancipated minors
- (g)(5) – abuse, neglect, and endangerment

HIPAA Privacy Rule

CFR 45 § 164.502(g)(3) cont’d
“such person” may not be a personal representative of an unemancipated minor and the unemancipated power may have authority to act as an individual, if...
A. Minor consents, no other consent is necessary by law, and minor has not requested parent, guardian, etc. to be personal representative, OR
B. Minor may lawfully obtain health care service without consent of parent and the minor consents OR
C. A parent asents to an agreement of confidentiality between a covered provider and the minor

HIPAA Privacy Rule

CFR 45 § 164.502(g)(3) cont’d
Notwithstanding previous subsections...
- If permitted by applicable state law, a covered entity may disclose protected health information to a parent, guardian or other person acting in loco parentis
- If prohibited by applicable state law, a covered entity may not disclose protected health information to a parent guardian or other person acting in loco parentis
- Where the parent, guardian, etc. is not the personal representative under paragraphs (A), (B), or (C) and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access, provided such decision is made by a licensed health care professional, in the exercise of professional judgment

HIPAA Privacy Rule

CFR 45 § 164.502(g)(5) Exce: abuse, neglect, endangerment situations.
A covered entity may elect not to treat a person as a personal representative if...
- Reasonable belief that patient has been or may be subjected to violence, abuse or neglect by such person, or
- Treating such person as the individual representative could endanger the patient, and
- In exercise of professional judgment, covered entity determines it is not in best interest of patient for person to be considered personal representative
Does the HIPAA Privacy Rule allow parents to see their children’s medical records?

Yes, generally, as his or her minor child’s personal representative when not inconsistent with State or other law.

Three exception:
- When the minor is the one who consents to care and the consent of the parent is not required under State or other applicable law;
- When the minor obtains care at the direction of a court or a person appointed by the court; and
- When, and to the extent that, the parent agrees that the minor and the health care provider may have a confidential relationship.

Does the HIPAA Privacy Rule allow parents to see their children’s medical records?

- Except when state law provides for access
- Except when state law denies access
- If State or other applicable law is silent on a parent’s right of access in these cases, the licensed health care provider may exercise his or her professional judgment to the extent allowed by law to grant or deny parental access to the minor’s medical information.
- As is the case with respect to all personal representatives under the Privacy Rule, a provider may choose not to treat a parent as a personal representative when the provider reasonably believes, in his or her professional judgment, that the child has been or may be subjected to domestic violence, abuse or neglect, or that treating the parent as the child’s personal representative could endanger the child.

Alabama Law: STD

Ala. Code § 22-11A-19:
- Notwithstanding any other provision of law, a minor 12 years of age or older who may have come into contact with any sexually transmitted disease as designated by the State Board of Health may give consent to the furnishing of medical care related to the diagnosis or treatment of such disease, provided a duly licensed practitioner of medicine in Alabama authorizes such diagnosis and treatment. The consent of the minor shall be as valid and binding as if the minor had achieved his or her majority, as the case may be. Such consent shall not be voidable nor subject to later disaffirmance because of minority. The medical provider or facility of whatever description providing diagnostic procedures or treatment to a minor patient who has come into contact with any designated sexually transmitted disease, may, but shall not be obligated to, inform the parent, parents or guardian of any such minor as to the treatment given or needed. (Emphasis added)

Alabama Law: Abortions (Section 26-21-4)

- A minor who elects not to seek or does not or cannot for any reason, obtain consent from either of her parents or legal guardian, may petition, on her own behalf, the juvenile court, or the court of equal standing, in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this chapter. Notice by the court to the minor's parents, parent, or legal guardian shall not be required or permitted

- Petition is confidential
- No reference to the medical records being confidential

Alabama Law: Custody Arrangements

- Ala. Code § 30-3-154: Availability of records to both parents.

- Unless otherwise prohibited by court order or statute, all records and information pertaining to the child, including, but not limited to, medical, physiological, dental, scholastic, athletic, extracurricular, and law enforcement, shall be equally available to both parents, in all types of custody arrangements. (Emphasis added)
Risk Management Points

- Alabama law allows minors 14 or older (or in other situations described by statute) to consent to medical treatment without additional parental consent, but does not prohibit parents or guardians from also consenting to medical treatment
- Absent a situation where treatment is required by law, a physician, physician practice or facility may offer to or decline to treat a minor without also receiving parental consent

Risk Management Points

- Confidentiality request
- Sensitive information: HIV/AIDS, STDs, pregnancy
- Surgery/invasive procedures
- Abuse
- Billing/reimbursement: Williams v. Baptist, 857 So. 2d 149 (Ala. Civ. App. 2003) (medical treatment provided to minor was a necessary and thus hospital was entitled to restitution from minor, even though minor lived at home and was solely supported by mother, where mother refused to pay)
- Divorce/custody
- Absent parents

Resources

http://alisondb.legislature.state.al.us/acas/ACAS_Loginie.asp (click “Code of Ala” and “View”)
http://www.hhs.gov/ocr/privacy/hipaa/understandimg/index.html
http://aappolicy.aappublications.org/cgi/reprint/pediatrics;112/5/1186.pdf
http://www.alabamaadministrativecode.state.al.us (Choose 420-4-1, Appendix I)

ProAssurance Risk Resource: (800) 282-6242 or (205) 877-4400, ext. 4712.