



U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES

**OFFICE FOR
CIVIL RIGHTS**

Am I my child’s “personal representative” under HIPAA?

If you have authority to make health care decisions for your minor child, you are probably your child’s personal representative, and you can exercise HIPAA rights with respect to your child’s protected health information (PHI). As your child’s personal representative, you have the right of access to your child’s protected health information, including your child’s complete medical record.¹ However, you may be prevented from being your child’s personal representative under HIPAA or prevented from accessing their medical records if:

1. Your child independently consented to a health care service, no other consent is required by law, and your child has not requested that you be treated as the personal representative;
2. Your state allows minors to obtain a health care service without the consent of a parent, guardian, or other person acting *in loco parentis*, and your child, a court, or another authorized person has consented to that treatment; or
3. You voluntarily agreed that your child’s information would be kept confidential from you.

These exceptions are generally limited to certain types of health care services. That is, you may be your minor child’s personal representative for — and have the right of access to PHI about — most medical treatments and health care services received by your child, but not be your child’s personal representative with respect to certain types of medical treatments/health care services.

A health provider may also decide not to treat you as a personal representative under HIPAA if the provider has a reasonable belief that you may have abused or neglected your child, that you may endanger your child, or that, in the provider’s professional judgment, it is not in your child’s best interest to treat you as his or her personal representative.

Whether you are your child’s personal representative under HIPAA depends, in part, on the laws of your state. Additionally, state law may limit your rights as your child’s personal representative, including your right of access to your child’s medical records.

¹ Neither you nor your child has a right under HIPAA to access notes of psychotherapy sessions that are kept separate from the medical record.

Six things you may want to find out about your state's laws:

1. The age of majority² (the age at which an individual is considered an adult);
2. What types of health care services a minor child can consent to without parental consent³;
3. What types of health care services someone other than a parent can consent to on a minor child's behalf (e.g., a court or another authorized adult);
4. Whether your state allows or requires health care providers to give parents access to certain health information about their minor children;
5. Whether your state prohibits health care providers from sharing or giving parents access to certain information about their minor children; and
6. Who has legal authority to make health care decisions for an emancipated minor or adult child who is unable to make health care decisions, if the patient has not identified a personal representative in writing.

Helpful resources for information about state laws:

* **Note:** HHS/OCR does not endorse, or guarantee the accuracy of, the materials available through the links below.

Grandfamilies.org (2017). Searchable database of state laws and legislation directly impacting kinship families (select: state > medical consent > statute), <http://www.grandfamilies.org/Search-Laws>

Kerwin, M.E., Kirby, K.C., Speziali, D., Duggan, M., Mellitz, C., Versek, B. & McNamara, A. (2015). What Can Parents Do? A Review of State Laws Regarding Decision Making for Adolescent Drug Abuse and Mental Health Treatment, Table 1, Parent and Adolescent Decision-Making Authority for Inpatient and Outpatient Drug and Mental Health Treatment. *Child Adolescent Substance Abuse* 24(3): 166–176. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4393016/>

National District Attorneys Association, Minor Consent to Medical Treatment Laws (2013). Retrieved from [http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20\(2\).pdf](http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20(2).pdf)

² In most states the age of majority is 18. Even when under the age of majority, a child may be considered an adult (“emancipated”) if they: are married, have a child, have joined the military, or have a court order declaring them to be emancipated.

³ For example, in many states a minor may consent to receive health care services related to substance use disorder treatment or outpatient counseling, under certain circumstances.