



## **When Your Child, Teenager, or Adult Son or Daughter has a Mental Illness or Substance Use Disorder, Including Opioid Addiction: What Parents Need to Know about HIPAA**

If you are the parent of a child who is affected by a mental health condition or substance use disorder, you want to be informed so you can help your child and keep them safe. As children develop from childhood through adolescence and into adulthood, both your rights and their rights over their health information change. HIPAA balances protecting privacy, assuring safety, respecting professional judgment, and including family, friends, and caregivers in your child’s treatment or care coordination, as appropriate to the situation.

1. In most cases, you are your minor child’s “personal representative,” and can exercise all of your child’s HIPAA rights, including the right to access their complete medical record<sup>1</sup> and to authorize or direct the disclosure of their health information to third parties of your choosing. A health care provider may ask you to show proof of your status as a health care decision-maker for your child. A provider can decide not to treat you as a personal representative if, for example, they have concerns that doing so might put your child’s safety at risk. There are some additional exceptions that may prevent you from being your child’s personal representative or from accessing their medical record, including:
  - a) 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 his or her personal representative;
  - b) 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
  - c) You voluntarily agreed that your child’s information would be kept confidential from you.
  
2. HIPAA generally follows state law about parents’ authority over their minor children’s treatment. Therefore, where state law gives your minor child the ability to consent to their own treatment and your child has consented, HIPAA does not give you the right to access information about that treatment. In other words, if your child is able to consent to treatment, he or she also has the ability to exercise his or her own rights under HIPAA regarding information about that treatment. You need to know the law in your state about minors’ ability to consent independently to mental health or substance use disorder treatment. For example, in many states, a minor may consent to receive certain types of treatment but

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

not others, or for limited amounts of time, without informing parents. Here are six things you may want to find out about your state's laws:

- 1) The age of majority<sup>2</sup> (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 consent<sup>3</sup>;
  - 3) What types of health care services someone other than a parent can consent to for a minor child (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 with, 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 child has not identified a personal representative in writing.
3. Once your son or daughter attains the age of majority based on your state's law, they are considered adults and capable of exercising all of the health privacy rights under HIPAA, unless they lack decision making capacity. Even if you think your adult son or daughter lacks maturity, if they are legal adults, they get to make their own health privacy decisions. An adult son or daughter who has attained the age of majority has the right to control the privacy of their health information, including making decisions about who can receive health information about them which was created when they were minor children.
4. HIPAA helps you stay connected with your adult son or daughter for whom you are caring by permitting health professionals to contact you with information related to them that is necessary and relevant to your involvement with their health care or payment for care. If your adult son or daughter becomes disoriented, delirious, or unaware of their surroundings due to, for example, opioid abuse or a mental health crisis, and arrives at a hospital emergency room for treatment, the doctors, nurses, and social workers may notify you of their location and general condition. First, the staff will determine whether your child agrees to share this information with you, or if you are the patient's personal representative. If your child is not able to make decisions (for example, if he/she is unconscious, sedated, severely intoxicated, or disoriented), then the doctors, nurses, and social workers may contact you without your child's permission when a health professional determines that doing so is in your son or daughter's best interests. The health professionals may share the information that is needed for notification (such as your child's location and general condition) or that is directly related to your involvement in their care.

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<sup>2</sup> 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.

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

5. If your adult son or daughter has the capacity to make decisions, doctors need their permission to share their information with you in order to help coordinate mental health or substance use disorder treatment, including treatment for opioid abuse. Your adult son or daughter's doctor, however, can infer that permission if you are involved in their health care or payment for that care, and they have not objected. Additionally, if they are incapacitated or are unavailable to give consent because of some emergency situation, HIPAA allows health and mental health providers to make decisions about sharing medical information with family, friends, and caregivers based on the providers' professional judgment about what is best for the patient, factoring in their prior expressed wishes, if any.

For example, if a patient who is addicted to opioids misses important medical appointments without any explanation, a primary health care provider at a general practice may believe that there is an emergency related to the opioid addiction and under the circumstances, may use professional judgment to determine that it is in the patient's best interests to reach out to emergency contacts, such as parents or family, and inform them of the situation. It can be helpful to establish yourself with your son or daughter's providers as a helper or caregiver involved in their care, before an emergency occurs, so the providers know not only who to notify in an emergency situation, but also who to call about their care. In cases involving significant impairment to your son or daughter's functioning, you may need to gain legal recognition as the guardian or obtain a medical power of attorney to establish your status as their personal representative under HIPAA.

6. Anytime there is a threat of serious and imminent harm to your son or daughter's health or safety (or to others, including you), HIPAA allows their health and mental health providers to share information with you, if you are in a position to prevent or lessen the threat. Your son or daughter's age or legal relationship to you is not a barrier when such a threat to health and safety exists. For example, if your adult son or daughter threatens to commit suicide by cutting, and you are in a position to remove knives and sharp objects from the home, the provider may notify you to enlist your assistance with removing dangerous objects and to discuss a plan for obtaining a higher level of care for him or her.
7. If your adult son or daughter is struggling with some of these issues, it may be useful, in advance of an emergency, to help them identify friends or other caregivers whom they would like to be notified in the event of a hospitalization or emergency, and to encourage or assist them to give the names of those individuals to their health care providers.
8. If your son or daughter receives treatment for a substance use disorder in a federally-funded treatment program, more stringent privacy-protective laws may apply under 42 CFR Part 2.

For more information with specific questions, please visit the OCR website:

- "Am I my child's personal representative under HIPAA?" Fact Sheet <https://www.hhs.gov/sites/default/files/am-i-my-childs.pdf>
- "When can parents access information about their minor child's\* mental health treatment?" Decision Tree <https://www.hhs.gov/sites/default/files/minors-hipaa-decision-tool.pdf>

- “When may a mental health professional use professional judgment to decide whether to share a minor patient’s treatment information with a parent?” Infographic <https://www.hhs.gov/sites/default/files/minor-professional-judgment-infographic.pdf>
- OCR’s Guidance on Sharing Mental Health Information: <https://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf>
- OCR’s FAQs on Personal Representatives and Minors: <https://www.hhs.gov/hipaa/for-professionals/faq/personal-representatives-and-minors>
- OCR’s FAQs on Mental Health: <https://www.hhs.gov/hipaa/for-professionals/faq/mental-health>

For more information about confidentiality of substance use disorder treatment information, see <https://www.samhsa.gov/laws-regulations-guidelines/medical-records-privacy-confidentiality>