

# THE JACKSON CLINIC PROFESSIONAL ASSOCIATION

## Policy on Access to & Release of a Minor's Medical Record

### **Background: Capacity and Age.**

- In Tennessee, as in other states, a patient must give consent for treatment (usually consent is inferred by voluntarily presenting for treatment). Without consent, the treatment can be charged as a battery by the physician.
- In order to give valid consent, the person must have the *capacity* to consent. *Capacity* may be described as the ability of an average person to understand and weigh the risks and benefits of undertaking the treatment.
- **The law presumes capacity exists for any person age 18 or older** – if an adult lacks the capacity to consent, the law provides various means whereby another person may give consent for treatment (durable power of attorney, conservatorship, etc.). In Tennessee, a “minor” is a person under the age of 18.
- The capacity to give consent includes the ability to deny consent outright or to withdraw consent after it has first been given.

### **Background: Treatment of Minors and protections in the law.**

- The general rule in Tennessee is that a minor child (under age 18) obtains treatment when consent is given by the child's parent, or a guardian or other person acting in place of a parent. If a parent accompanies a minor child and seeks medical care for the child, consent is presumed by conduct.
- Tennessee, like many other states, recognizes certain “rights” of minors to seek and obtain treatment without knowledge or consent of a parent. Those exceptions are listed below. In all other situations, if an unaccompanied minor child presents requesting treatment, and none of the exceptions apply, the provider should make reasonable attempts to contact the parent (or guardian) to obtain consent to treat the child. Absent consent, the provider should refuse to treat the child (unless an exception applies).
- Tennessee law provides the following exceptions:
  - (1) Furnishing of **contraceptive supplies** and information to any minor “who requests and is in need of birth control procedures, supplies or information.” T.C.A. § 68-34-107.
  - (2) **Prenatal care** (including pregnancy testing). T.C.A. § 63-6-223.
  - (3) **Sexually transmitted disease.** T.C.A. § 68-10-104(c). The law provides that any physician “may examine, diagnose and treat minors infected with sexually transmitted diseases without the knowledge or consent of the parents of the minors, and shall incur no civil or civil or criminal liability in connection therewith...”
  - (4) **Juvenile drug abuse.** T.C.A. § 63-6-220. This is the only provision that includes the following language: “A physician may use his own discretion in determining whether to notify the juvenile's parents of such treatment.”
  - (5) **Emergency medical or surgical treatment.** T.C.A. § 63-6-222. This law requires that the physician make “a reasonable effort to notify the parents if known or readily ascertainable,” and has a requirement that the physician have a “good faith belief” that rendering emergency care is necessary to protect the health of the child.
  - (6) **The “Mature Minor” exception.** Tennessee recognizes the right of mature minors to control their own medical decisions. *Cardwell v. Bechtol*, 724 S.W.2d 739 (Tenn. 1987). Although rarely applied, **this is a case-by-case situation that will come into play with minors who are 17, 16 and perhaps 15** (the decision is **not** strictly age-dependent, but the closer to 18 the more likely the doctrine is to apply), **and who evidence the capacity to consent by ability, experience, education, training, degree of maturity and demonstrated judgment, and the adolescent's general conduct and demeanor.** Given all these factors and circumstances, the call that has to be made is whether the child, although a minor, is able to appreciate the risks and consequences of the medical treatment decision to be made ... and that call must be made by the treating physician.
- A child seeking treatment independent of a parent (including for any of the exceptions listed above) should be advised that the medical service is not free; that it will be billed to applicable health insurance; and that because health insurance is obtained through a parent, the household will likely receive information from the insurance company through the mail about the medical treatment. The child also should be provided with a copy of The Jackson Clinic's *Notice of Health Information Privacy Practices.*

### **General Privacy Principles Concerning a Minor's Health Information.**

- Generally, the medical record and health information of a minor child should be protected and kept confidential in the same manner as the record of an adult patient
- A person with capacity to consent to medical treatment also has the capacity to exercise limited control over the use and disclosure of the individual's health record/information. Therefore, a parent will usually exercise these rights with respect to the records of a minor child under the age of 18.
- The federal HIPAA Privacy Regulation requires that a minor be treated the same as an adult with respect to any situation when, under state law, the minor is able to consent to treatment without need of parental consent. 45 CFR § 162.502(g)(3). Therefore, if one of the exceptions listed above applies, a minor can, acting on his or her own behalf, exercise whatever rights of control may exist for the patient over health information in the Clinic's medical record.
- Federal law provides that a patient may request to restrict a Clinic from disclosing particular health information to a health insurance company or health plan. However, the same federal law also provides that the Clinic must agree to such a request **ONLY** if the service to which the information pertains is paid in full "out-of-pocket" by the individual patient or patient's representative. 45 CFR 164.522(a)(1)(vi). The Clinic requires such payment-in-full on the date of service. Without payment in full at the time of service, a request to restrict the use or disclosure of the health information in the medical record will be denied.
- For any other situation, a request to restrict disclosure of an individual patient's health information requires a written request and approval by The Jackson Clinic's Privacy Coordinator. Only the Privacy Coordinator (or other authorized designee of the organization) may agree to a request to restrict how protected health information is used, and the Privacy Coordinator is not required to agree to a restriction request. No physician or other employee of The Jackson Clinic may bind The Clinic to a request to restrict disclosure of health information. Generally, disclosure restrictions that may deprive another treating provider of important health information are disfavored as unfair to both the other treating provider and the patient's overall health. Similarly, restricting disclosures to health insurance companies or health plans when needed to obtain payment for services also are disfavored and not ordinarily approved. These general rules and policies apply to the medical records of a minor patient as well as an adult patient.

### **Parent's Right to Receive a Copy of the Health Record of a Minor Child**

- A parent exercises "patient control" over the medical record of the parent's minor child (under the age of 18).
- A parent is entitled under both federal and state law to access the medical record of his/her child. If the parent of a minor child (under age of 18) submits a request in writing for a copy of the child's medical record, a copy will be provided unless The Clinic has received a court order to the contrary.
- The parent's entitlement under the law is to the entire medical record, unless some portions have been restricted from disclosure because of the federally-mandated right cited above, or because The Clinic has agreed to a request to restrict disclosure of certain health information (a very rare occurrence).
- There are many families with divorced parents. Even a non-custodial parent has a statutory right in Tennessee to receive a copy of the minor child's medical record upon written request. T.C.A. § 36-6-103. If a non-custodial parent requests a copy of his/her child's medical record, the copy will be provided unless The Clinic has been presented with a court order that restricts such disclosure of the medical record to the non-custodial parent.

### **Parent's Right to Access the Health Record of a Minor Child via the FollowMyHealth Patient Portal**

- The parent (including a non-custodial parent) of a minor child under the age of 14 may sign up for proxy access to the child's medical record via the FollowMyHealth patient portal. "Consent" of the child is not required for this access. The Proxy parent may be required to execute an authorization or other form to create a FollowMyHealth account. Proxy access to the record ends at the child's 14<sup>th</sup> birthday.
- A parent of a minor child between the ages of 14-17 may only be granted proxy access to the child's record via the FollowMyHealth patient portal only if a **Minor Patient (14-17) Proxy Authorization Form** is completed and signed by both the child and the Proxy parent. The Authorization Form is good for one year, and must be re-executed by both the minor child and the Proxy parent each year. Proxy access ends at the child's 18<sup>th</sup> birthday.

APPROVED BY GENERAL COUNSEL

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