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# Patient Portals – Considerations for Minors

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## Incentives to Create Portals

- **HIPAA requires that patients be able to access copies of their health data**
  - If patient requests it in electronic form, must be provided in electronic form if data is stored that way
  - A portal is not required – but is a convenient way of getting patients copies of data they are likely to find relevant (vs. waiting for them to ask for it).
- **Under Meaningful Use Stage 1, patients are required to be provided with care summaries – a portal provides a way to accomplish this.**

## Incentives to Create Portals (cont.)

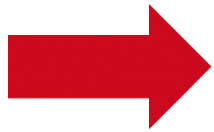
- **Stage 2 of Meaningful Use may require participating entities/providers to provide “view and download” functionality for certain aspects of EHRs (for example, care summaries, discharge instructions)**
- **These requirements or incentives are not limited to just adult patients.**
- **Families may request access to children’s records, records of family members for whom they have caregiver obligations**

## Rules about Minors

- **Note: This is intended to provide you with general knowledge but not a substitute for legal advice. I encourage you to work with your legal counsel in structuring your policies regarding minors' data.**

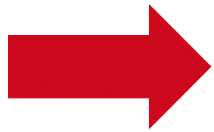
## Rules about Minors (cont.)

- **HIPAA largely defers to state law. In general, whomever has the right/obligation to consent for treatment purposes holds the privacy rights with respect to the data.**
  - **In other words, the minor has the right to seek and obtain treatment on his or her own, without the consent of the parent, they hold the privacy rights with respect to data about that treatment.**



## California Rules About Minors

- **An emancipated minor is considered to be an adult for purposes of medical care (Cal. Family Code §7050(3)(1)). An emancipated minor is one who:**
  - **Has entered into a valid marriage (even if the marriage has been dissolved).**
  - **Is on active duty with the armed forces.**
  - **Has been declared emancipated by a court. (§7002)**
- **A minor can also petition a court to grant consent for medical care if the minor is 16 and the consent of a parent or guardian for care is necessary but there is no parent or guardian to provide consent. (§ 6911(a))**



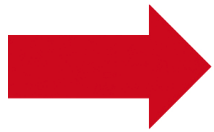
## **California Rules about Minors (cont.)**

- **A minor can consent for medical care if he/she is 15 years of age or older and:**
  - **Is living separate and apart from her parents or guardian, whether with or without the consent of a parent or guardian, and regardless of the duration of this separation.**
  - **The minor is managing the minor's own financial affairs, regardless of the source of the minor's income.**

**(§6922(a))**



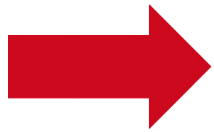
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## **California Rules about Minors (cont.)**

- **Minor consent based on services sought:**
  - **Abortion – any age.**
  - **For drug & alcohol-related problems –  $\geq 12$  years of age (except for replacement narcotic abuse treatment) (§6929) (note that a parent can consent to medical care & counseling for alcohol and drug-related care when the minor does not consent)**
  - **Family planning funded by federal Title X – any age; for prevention and treatment of pregnancy (other than sterilization), any age (pursuant to state law)**
  - **HIV/AIDS – if funded by federal Title X, any age; if not,  $\geq 12$  years under state law (testing and treatment)**

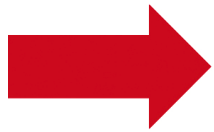




## **California Rules about Minors (cont.)**

- **Minor Consent Based on Services sought:**
    - **Infectious, Contagious or Communicable Diseases that are Reportable -  $\geq 12$  years of age (§6926(a))**
    - **Mental Health Treatment and Counseling -  $\geq 12$  years of age, if:**
      - The minor is mature enough to intelligently participate in the services (in the view of the attending professional) and
      - The minor would present a danger of serious physical or mental harm to self or others without treatment or is an alleged victim of incest or child abuse.
- (does not apply to convulsive therapy, psychosurgery or psychotropic drugs)**  
**(§6924)**



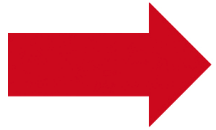


## **California Rules about Minors (cont.)**

- **Minor Consent Based on Services Sought:**
  - **Rape Treatment – any age (for diagnosis & treatment and collection of evidence) (§6927 & 6928)**
  - **Sexual Assault Treatment – any age for diagnosis & treatment and collection of evidence) (§6928)**
  - **Sexually Transmitted Diseases – If funded by Title X, any age; if not,  $\geq 12$  years of age if the disease is one that is reportable**
  - **Suspected Child Abuse Victims:**
    - A provider may take x-rays without a parent or guardian's consent but only for the purpose of diagnosing the case as one of possible child abuse or neglect (Cal Penal Code §11171.2) (A peace officer may also apply to a magistrate for order of an x-ray without parental consent – Penal Code §11171.5)



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## What does this mean?

- Information about services provided to a minor for which the minor has the right to consent to treatment cannot be placed in a portal that can be accessed by a parent or guardian.
- A portal for a minor may include these services.
- Other circumstances?

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