

MINORS AND MENTAL HEALTH CARE

Minors in New York State Can Access Mental Health Care without Parental Involvement under Many Circumstances

Minor:

A minor is a person under the age of 18.

Informed Consent:

To give informed consent, a patient must be able to understand and appreciate the nature and consequences of a proposed treatment, including its risks, benefits and alternatives, and to reach an informed decision. When the law allows a minor to access a health service on his/her own and the provider determines that the minor can give informed consent, the minor can obtain the care without parental involvement. Evaluation of capacity to consent should be documented in the patient's chart.

Confidentiality:

Confidentiality means that information related to a patient's treatment, including the fact that a patient is receiving treatment, may not be disclosed without the permission of the client or someone authorized to act on the client's behalf, unless otherwise required by law.

Mental Health Services:

For the purposes of this card, "mental health services" or "mental health care" means examination, diagnosis, care, treatment or rehabilitation provided to persons experiencing mental health problems at mental health facilities operated or licensed by the New York State Department of Mental Health ("Article 31 facilities").¹

¹N.Y. MENTAL HYG. LAW § 1.03(4) (McKinney 2004). Mental health services include verbal counseling and the prescription and administration of psychotropic medications, which are included in all major programs—including those for children—licensed by the New York State Office of Mental Health.

²N.Y. MENTAL HYG. LAW § 33.21(c)-(d) (McKinney 2004), available at <http://assembly.state.ny.us/leg/?cl=62&a=17>. A signed statement that the minor knowingly, intentionally, and voluntarily seeks outpatient treatment must be included in the patient's chart. N.Y. MENTAL HYG. LAW § 33.21(c). Even if one of these criteria is satisfied, parental or guardian consent must be obtained for mental health care that involves surgery or other major medical treatment like surgery, shock treatment, or the use of experimental drugs or procedures. N.Y. MENTAL HYG. LAW § 33.03(b)(4) (McKinney 2004).

³N.Y. MENTAL HYG. LAW § 9.13(a) (McKinney 2004).

⁴N.Y. MENTAL HYG. LAW § 33.21(e). If parents have refused to consent, the determination of capacity and best interests must be made by the treating physician and a second physician who specializes in psychiatry and is not an employee of the hospital. Where medication is provided under this rule, notice of the decision to administer psychotropic medications must be provided to the parent or guardian.

⁵See N.Y. MENTAL HYG. LAW § 33.13 (McKinney 2004).

⁶N.Y. MENTAL HYG. LAW § 33.16(b)(3-4), (c)(2) (McKinney 2004).

⁷N.Y. MENTAL HYG. LAW § 33.13(c)(6). This law is not to be construed as imposing an obligation upon a treating psychiatrist or psychologist to release information under such circumstances.

⁸N.Y. C.P.L.R. §§ 4508(a)(4), 4510(b)(2) (McKinney 2004).

⁹For a full discussion of laws that may compromise confidentiality, please refer to the NYCLU publication, *Teenagers, Health Care and the Law*.

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Further, standards of professional practice generally recommend that specific details of therapy sessions not be disclosed without the consent of the minor patient, even where a parent consented to the care. To facilitate a minor patient's participation in treatment, a provider may ask the parent to agree that details of the sessions will remain confidential unless the minor permits disclosure or indicates an intent to hurt himself or another, or for other purposes permitted under the law.

Safety Issues

New York law permits psychologists and psychiatrists to breach confidentiality when they determine that a patient presents a serious danger to another person. In addition, social workers and rape crisis counselors are not required to keep confidential communications by a client that indicate an intent to commit a crime or harmful act.⁸ Some New York case law and most professional organizations suggest that all mental health care providers may breach confidentiality when they determine that a patient presents a danger to himself or others.⁹

For mental health referrals, contact:
1-800-LIFENET (1-800-543-3638).

This publication is not intended to provide individualized legal advice. If you face a specific legal problem, please consult an attorney or the NYCLU.

Many providers are unaware that some minors may receive confidential mental health services without parental consent.

Before providing mental health care without parental involvement, a provider must determine that the minor knowingly and voluntarily seeks the treatment.

In addition, the conditions below must be satisfied:

Outpatient Services:

Practitioners may provide outpatient mental health care without parental involvement to minors who can give informed consent if the treatment is clinically indicated and necessary to the minor's well-being and **any one** of the following conditions applies:

- (1) A parent or guardian is not reasonably available; **OR**
- (2) Requiring parental consent or involvement would have a detrimental effect on the course of treatment (which includes the possibility that the minor will not seek treatment if he or she is forced to involve a parent); **OR**
- (3) A parent or guardian has refused to consent and a physician determines that treatment is in the minor's best interests. For this criterion, if the physician determines that notifying parents of the determination to provide treatment is *clinically appropriate*, and only if it is clinically appropriate, the physician must do so.²

A provider can conduct an initial interview with the minor without parental consent to determine whether the patient meets one of these criteria. There is no age minimum; rather, the provider must make a

case-by-case assessment. Once the above test is satisfied, a practitioner may provide short-term or long-term care, depending upon which is clinically indicated.

Inpatient Services:

Inpatient mental health care facilities may admit 16- and 17-year-olds as voluntary patients on their own application, although a facility director may require parental or guardian involvement. Teens 15 and younger can only be admitted upon the application of a parent, guardian or other authorized party.³

Providers may prescribe medication to 16- or 17-year-olds in an inpatient setting without parental consent when one of the three criteria on page 2 is satisfied **and** where the provider has determined that the minor has the capacity to consent and medication is in the minor's best interests.⁴ However, they must obtain parental or guardian consent to medicate younger teens.

Referrals:

Practitioners, including pediatricians and other adolescent primary care providers, may make mental health care referrals for minor patients without a parent's knowledge or consent.

As with all other health care, practitioners can provide mental health treatment, including medication, in emergency situations and/or when the minor is emancipated (living on his/her own and financially self-sufficient), married, pregnant or the parent of a child. Please see *Teenagers, Health Care and the Law* (NYCLU) for more information.

Confidentiality:

Fear of disclosure prevents some minors from seeking services. When young people are assured that providers will respect their right to confidentiality, they are more likely to seek care, especially mental health care.

Generally

When a minor receives mental health treatment without parental consent, treatment records generally may not be released to anyone without the patient's permission or unless required or permitted by law,⁵ for example in the context of child abuse allegations, a court order or when authorized for insurance and billing purposes.

When Parents Consent to Mental Health Care

Generally, when treatment is provided with parental consent, parents can access their minor children's mental health records. However, the law limits parental access under the following two circumstances:

- The provider **must not reveal** the information to a patient's parents if he or she determines that disclosure would be detrimental to the patient's course of treatment, or to the provider's relationship with the minor, or to the minor's relationship with his or her parents, except in cases of safety.
- The provider **may withhold** information from a minor patient's parents if the minor is over the age of 12 and objects to the disclosure. In such cases, the health care provider can rely on his or her judgment as to whether to disclose the information.⁶

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