

**UPDATE**

DATE: September 21, 2011  
TO: AzHHA Members  
FROM: Coppersmith Schermer & Brockelman PLC  
RE: Changes for Health Care Providers Resulting from Parents' Bill of Rights

In 2010, the Arizona legislature passed the Parents' Bill of Rights (PBOR). The new law provides parents with much broader access to their minor children's medical records than before. Specifically, the PBOR gives parents "[t]he right to access and review all medical records of the minor child unless otherwise prohibited by law or the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement official requests that the information not be released."<sup>1</sup> *This is true even when the minor consents to his or her own medical treatment.*

Thus, other than a narrow exception for a parent who is suspected of a crime against the minor, the new law allows a parent unfettered access to a minor child's medical records "unless otherwise prohibited by law." The law "prohibits" parental access when:

1. The records relate to communicable disease information and the minor has "capacity to consent" under A.R.S. § 36-661 et seq.

A person who obtains communicable-disease-related information in the course of providing a health service (or obtains that information from a health care provider pursuant to an authorization) may not disclose that information, except to certain people.<sup>2</sup> A minor's parent is not one of the authorized people, unless the parent is the minor's health care decision maker and the minor does not have capacity to "understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure and to make an informed decision concerning that service, treatment or procedure."<sup>3</sup>

2. A minor has an emancipation order from a court.

A minor who has an emancipation order from a court is recognized as an adult for the purpose of the "right to access medical treatment and records."<sup>4</sup>

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<sup>1</sup> A.R.S. § 1-602(A)(6) (emphasis added).

<sup>2</sup> See A.R.S. § 36-664(A).

<sup>3</sup> See A.R.S. §§ 36-661(2), 36-663(A).

<sup>4</sup> See A.R.S. § 12-2454(A)(7).

3. The federal substance abuse treatment regulations prohibit such access.

The federal substance abuse treatment regulations (called the “Part 2” regulations because they are located at 42 C.F.R. Part 2) apply to records generated by a “federally assisted” alcohol or drug abuse “program,”<sup>5</sup> and to health plans and health care providers that receive records from these programs.<sup>6</sup> If a minor patient has the legal capacity under state law to apply for and obtain alcohol or drug abuse treatment, then only the minor patient may give consent to disclosures under the Part 2 regulations.<sup>7</sup> Consequently, where Arizona law permits a minor to consent to his or her own treatment,<sup>8</sup> a health care provider may not disclose to the minor’s parents any records covered by the Part 2 regulations unless the minor consents to the disclosure.

For situations where state law requires parental consent for alcohol or drug abuse treatment, the Part 2 regulations require that both the minor and a parent give consent to any disclosures that require consent.<sup>9</sup> Finally, a minor’s application for treatment may be disclosed to the parent only if the minor consents to that disclosure, or the program director determines that the minor lacks the capacity to make a rational choice regarding such consent.<sup>10</sup>

4. A HIPAA Privacy Rule exception to access by a personal representative applies.

The HIPAA Privacy Rule requires a covered entity to follow state law regarding access to a minor’s records if state law expressly requires that parents be given access to health information related to care provided to a minor. As with adult patients, however, health care providers still may decline to provide a parent access to a minor’s records if, in the provider’s professional judgment, it is not in the patient’s best interest to treat the parent or guardian as the patient’s representative and the provider has a reasonable belief that the parent or guardian has abused or neglected the patient or that treating the parent or guardian as the personal representative could endanger the patient.<sup>11</sup> Health care providers also may decline to provide a parent access to a minor’s records if, in the provider’s professional judgment, the access requested is reasonably likely to endanger the life or physical safety of the minor or another person,<sup>12</sup> or it is reasonably likely to cause substantial harm to the minor or another person.<sup>13</sup>

Impact on Health Care Providers

Before the PBOR was enacted, Arizona did not have a law that expressly granted a right to parents to access a child’s medical records. Instead, Arizona law required release of a

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<sup>5</sup> See 42 C.F.R. § 2.3.

<sup>6</sup> 42 C.F.R. § 2.12(d)(2)(i); 42 C.F.R. § 2.12(d)(2)(iii).

<sup>7</sup> See 42 C.F.R. § 2.14(b).

<sup>8</sup> See A.R.S. § 44-133.01. In Arizona, a minor can consent to alcohol or drug treatment only if he is 12 years of age or older and is found to be under the influence of a dangerous drug (including suffering from withdrawal symptoms).

<sup>9</sup> 42 C.F.R. § 2.14(c)(1).

<sup>10</sup> 42 C.F.R. § 2.14(c)(2).

<sup>11</sup> 45 C.F.R. § 164.502(g)(1).

<sup>12</sup> 45 C.F.R. § 164.524(a)(3)(i).

<sup>13</sup> 45 C.F.R. § 164.524(a)(3)(iii).

patient's records to the patient or the patient's "health care decision maker."<sup>14</sup> Because Arizona law did not expressly give parents the unlimited right to access their children's health information, parents only had the right to access the child's health information when the parents were acting as the health care decision makers for the child (except where parents needed the information to make informed decisions on other non-related care to which the parents needed to consent).

Now, health care providers must permit parents to access their minor children's medical records, in accordance with the general rule set out in A.R.S. § 1-602(A)(6), except where: (1) the records relate to communicable disease information, and the minor has "capacity to consent" under A.R.S. § 36-661 *et seq.*, (2) a minor is emancipated, (3) the federal Part 2 regulations prohibit such access, (4) a HIPAA Privacy Rule exception to access by a personal representative applies, or (5) the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement official requests that the information not be released (pursuant to A.R.S. § 1-602(A)(6)).

If you have any question or need further information, please contact Mayan Tahan at [mtahan@csblaw.com](mailto:mtahan@csblaw.com) (602-381-5475), or Lauren Weinzweig at [lweinzweig@csblaw.com](mailto:lweinzweig@csblaw.com) (602-381-5466).

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<sup>14</sup> See A.R.S. § 12-2293(A).