



Division of Insurance

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BULLETIN B 03-12

TO: ALL HEALTH CARE INSURERS AUTHORIZED TO TRANSACT HEALTH INSURANCE IN THE STATE OF ALASKA AND OTHER INTERESTED PARTIES

RE: TREATMENT OF PROTECTED HEALTH INFORMATION OF A MINOR

The division has received complaints and questions regarding the interaction of and compliance with the Alaska laws and the privacy regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) relating to protections afforded to an individual's health care information and access by a parent or guardian to their minor's protected health information (PHI). This bulletin is to clarify how the state laws and federal regulations interact and to provide information on compliance requirements relating to a claim or payment of health care services and supplies provided to an unemancipated minor.

HIPAA

Privacy regulations adopted under HIPAA defer to state law with respect to access to a minor's PHI by a parent or guardian. Guidance provided by the U.S. Department of Health and Human Services on this issue states that "the privacy rule generally allows a parent access to the medical records about his or her child . . . when such access is not inconsistent with State or other law." Therefore, Alaska law determines the extent to which a parent or guardian may have access to their minor child's PHI.

Alaska Laws

No Alaska law prohibits or restricts disclosure of a minor's PHI to a parent or guardian.

AS 47

There are several Alaska public health laws, including AS 47.30.590, 47.30.845, and 47.37.210, that address confidentiality of patient records. These laws are directed toward health care providers and facilities providing the health care services and do not prohibit or restrict disclosure of a minor's PHI to a parent or guardian. In fact, AS 47.30.590, relating to mental health services provided under the Community Mental Health Services Act, requires disclosure of confidential information to the parents or guardian of an unemancipated minor.

AS 25

AS 25.20.025 sets out requirements relating to a minor's ability to consent for medical and dental services. AS 25.20.025(a)(2) authorizes a minor to "give consent for medical and dental services if the parent or legal guardian of the minor cannot be contacted or, if contacted, is unwilling either to grant or withhold consent." This statute assumes that the provider of health care services has contacted, or has attempted to contact the parent or guardian to discuss the minor's treatment or health care services, thus involving disclosure of the minor's PHI.

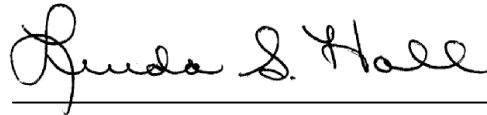
AS 25.20.025(a)(4) allows a minor to give consent for “diagnosis, prevention or treatment of pregnancy, and for diagnosis and treatment of venereal disease.” If a minor obtains medical service under AS 25.20.025, “the parent or guardian of the minor is relieved of all financial obligation to the provider of the service” See AS 25.20.025(a)(5). A provider should not be billing a parent or guardian if the provider treats a minor under AS 25.20.025 because the parent or guardian is not legally responsible for any those services or supplies. Thus, a health care insurer is generally not obligated to pay for services a minor receives under AS 25.20.025, because most, if not all, insurance contracts contain an exclusion from benefits for those services and supplies that the insured is not legally obligated to pay.

AS 21.07

AS 21.07.040(b) provides that medical information may be disclosed if “the information is disclosed for purposes of obtaining reimbursement under health insurance.” This provision does not prohibit or restrict disclosure of a minor’s health information to a parent or guardian, and is consistent with HIPAA.

Based on the above, in order to comply with Alaska laws a health care insurer writing health insurance in Alaska shall provide to the parent or guardian of an unemancipated minor any and all health information relating to a claim or payment for health care services or supplies provided to an unemancipated minor without authorization from the minor. The division will consider withholding this health care information from the parent or guardian of an unemancipated minor an unfair trade practice under AS 21.36 and subject to administrative action.

Dated this 2nd day of December, 2003 at Anchorage, Alaska.

A handwritten signature in cursive script that reads "Linda S. Hall". The signature is written in black ink and is positioned above a horizontal line.

Linda S. Hall
Director