

Appendix 7 - Illinois Special Record Protections

The following is a summary of the provisions of Illinois laws that provide extraordinary protections for certain categories of information considered in the Final Assessment of Variation and Analysis of Solutions Report.

Mental Health Information

Illinois law provides strict protections to mental health and developmental disabilities information. *Mental Health and Developmental Disabilities Confidentiality Act*, 740 ILCS 110/1 *et seq.* Under this law, and with limited exceptions, information relating to “mental health or developmental disabilities services” may not be released without the patient’s specific written “consent.” The definition of what constitutes “mental health services” includes examination, diagnosis, evaluation, treatment, and pharmaceuticals.

There are two exceptions that may be applied to the given scenarios. First, there is an “emergency exception” that permits disclosures “to the extent disclosure is, in the sole discretion of the therapist, necessary to the provision of emergency medical care to a recipient who is unable to assert or waive his or her rights hereunder.” Thus, if the patient is unable to sign a consent at the time (and has not signed an advance consent), relevant information may be released without consent.

Second, there is a “therapist” exception that permits a health care provider providing “mental health services” to disclose information without consent to certain persons involved in the care, including a “consulting therapist.” Thus information may be shared without consent if the health care provider receiving the information is a “consulting therapist.”

The law has specific requirements as to what constitutes a valid “consent,” which are similar to HIPAA’s Authorization requirements but require some additional provisions (such as a witness signature). Also, the consent must contain an express calendar expiration date or the requested information may only be released on the day the consent is received. To be valid, the consent must specify “the person or agency” to which disclosure will be made, and “advance consent” is valid only if the information to be released is specified in detail and the duration of the consent is indicated.

Illinois law specifically prohibits redisclosures of released information unless the patient has consented to subsequent disclosures.

The Illinois law permits persons aggrieved by violation of the law to sue for damages and attorneys’ fees, and provides that violation of the law constitutes a criminal misdemeanor.

Substance Abuse Information



Illinois has adopted the federal substance abuse regulations governing federally assisted treatment programs (42 CFR Part 2) as the standards that apply to state assisted treatment programs.

Alcoholism and Other Drug Abuse and Dependency Act, 20 ILCS 301/1-1 et seq. The Illinois law protects: “Records of the identity, diagnosis, prognosis or treatment of any patient maintained in connection with the performance of any program or activity relating to alcohol or other drug abuse or dependency education, early intervention, intervention, training, treatment or rehabilitation which is regulated, authorized, or directly or indirectly assisted by any Department or agency of this State or under any provision of [the Illinois] Act”

Under the state law and the federal regulations, information may be disclosed only under certain circumstances, including “with patient consent” or for “medical emergencies.”

These laws also specify the required form of a valid “consent”, including the specific name or title of the individual or the name of the organization to which disclosure is to be made and a specific expiration date, event, or condition – which must insure the consent lasts no longer than reasonably necessary to serve its purpose.

There is also a specific prohibition against redisclosure (further disclosure is prohibited unless the written consent permits it), and a written statement describing the prohibition must be included with any disclosures made with the patient’s consent.

The Illinois law provides that violation of the law constitutes a criminal misdemeanor.

HIV/AIDS Information

The Illinois AIDS Confidentiality Act, 410 ILCS 305/1 et seq., contains a general prohibition against disclosures of the identity of persons tested and against disclosures of test results in a manner that permits identification of the individual, which limited exceptions, such as to the individual or to persons designated in a “legally effective release,” and other exceptions that do not apply to these scenarios.

The law also contains a prohibition against redisclosure.

The Illinois law permits persons aggrieved by violation of the law to sue for damages and attorneys’ fees, and provides that violation of the law constitutes a criminal misdemeanor.

Genetic Testing Information

The Illinois law provides extraordinary protections to genetic testing information. *Genetic Information Privacy Act*, 410 ILCS 513/1 *et seq.* Under this law, genetic testing and information derived from such testing may only be released to the individual tested, to persons “specifically authorized” in a “specific written legally effective release” by the subject of the test or the subject’s legally authorized representative, and other limited exceptions that are not relevant to the scenarios presented in this analysis.

This law also contains a specific prohibition against redisclosure, and recipients of genetic test information without the patient’s signed release.

The Illinois law permits persons aggrieved by violation of the law to sue for damages and attorneys’ fees, and provides that violation of the law constitutes a criminal misdemeanor.

Rights of Parents and Minors to Access and Control Release of the Minor’s Health Information

(Treatment Under HIPAA)

The HIPAA Privacy Rule (45 CFR 164.502(g)) requires covered entities to treat persons considered to be the patient’s “personal representative” as the individual with respect to the individual’s HIPAA privacy rights, including the rights to access and authorize release of information. Under HIPAA, a personal representative is a person legally authorized to make health care decisions on the individual’s behalf. In the case of minors, parents are generally considered to be the personal representatives for their minor children, and thus are generally entitled to access and authorize release of the child’s health information. However, in certain situations, the parent may not be considered the personal representative of the minor child (for example, if state law permits the minor to consent to a certain type of health care service without the parent’s consent). In such cases, the Privacy Rule generally defers to State or other law that either permits, requires or prohibits providing parental access. If the underlying state law does not contain a specific provision addressing parental access, the Privacy Rule permits the health care professional to look to other law for guidance and exercise judgment as to what is in the minor’s best interest in permitting or denying parental access to information.

In other words, state law will govern the rights of parents and minors when such law requires, permits, or prohibits disclosure or access to a parent of a minor child’s health information, but the health care provider may exercise judgment if the underlying law is silent on the issue of parental access to the minor’s health care information. See DHHS Summary of the HIPAA Privacy Rule at <http://www.hhs.gov/ocr/privacysummary.rtf> . See also American Medical Association Code of Ethics, E-5.055 (Confidential Care for Minors).

(Treatment Under Illinois Law)

Medical and Surgical Procedures - Consent

Illinois law permits certain minors to consent to the performance of medical or surgical procedures if the minor is:

- Married;
- A parent; or
- Pregnant.

Under this law, such minors and any person who is 18 years or older is deemed to have the same legal capacity to act as a person of legal age. Further, minor parents have legal capacity to consent to procedures performed on his or her child and parental consent is not required for emergency treatment or first aid given to a minor when obtaining such consent is not feasible. *Consent by Minors to Medical Procedures Act, 410 ILCS 210/0.01 et seq.*

Sexual Assault/Abuse - Consent

Illinois law also contains special consent provisions allowing for minor consent (without the need for parental consent) for certain types of health care services, namely:

- Medical care and counseling related to the diagnosis or treatment of any disease or injury arising from sexual assault or abuse of a minor victim.

STD and Alcohol/ Drug Abuse - Consent

In addition, there are specific provisions permitting minors age 12 and older may consent (and parental consent is not required) to medical care and counseling related to diagnosis or treatment relating to certain diseases, namely:

- Minors who may have come into contact with a sexually transmitted disease
- Minors who may be determined to be an addict, an alcoholic or intoxicated person or may have a family member who abuses drug or alcohol.

Consent by Minors to Medical Procedures Act, 410 ILCS 210/0.01 et seq.; Consent by Minors to Medical Procedures Act, 410 ILCS 210/0.01 et seq.

The federal regulations governing alcohol and drug abuse treatment (the “Part 2” regulations) similarly provide that minors age 12 through 18 may authorize release of their own information. 42 CFR 2.15

Mental Health Services – Consent and Parental Access/Notification:

Illinois law permits minors age 12 and older to receive a limited amount of counseling services or psychotherapy on an outpatient basis without parental consent, and providers are *prohibited* from notifying the minor’s parents without the minor’s consent “unless the facility director believes such disclosure is necessary,” in which case the minor must be informed. *Mental Health and Developmental Disabilities Code*, 405 ILCS 5/3-301.

Minors age 16 and older may be admitted to a mental health facility and treated as an adult; however, in that case, parental consent *is required*. *Mental Health and Developmental Disabilities Code*, 405 ILCS 5/3-302.

Under Illinois law, minors age 12 through 17 have the right to access and authorize release of their own mental health and developmental disabilities records and information, and their parents have such rights only if the minor does not object or the therapist does not feel there are compelling reasons to deny parental access. (Nonetheless, parents may receive information regarding the minor’s physical and mental condition, diagnosis, treatment needs, services provided/needed, and medication.). *Mental Health and Developmental Disabilities Confidentiality Act*, 740 ILCS 110/5.

Birth Control Services

Further, birth control services and information may be given by licensed physicians to any minor who is:

- Married;
- A parent;
- Pregnant;
- Has parental consent;
- Is referred by a physician, clergyman or planned parenthood agency;
- Or where the failure to provide such services would create a serious health hazard.

Birth Control Services to Minors Act, 325 ILCS at 10/1.

Parental Access/Notification Provisions

These laws are generally silent as to the issue of parental access to the minor’s information, except, for example, in the case of:

- **STD and Alcohol/Substance Abuse – Parental Involvement.** In the provision of diagnosis or treatment relating to sexually transmitted disease and alcohol/substance abuse for a minor, reasonable efforts must be made *upon the minor’s consent* to involve the minor’s family in treatment, if not detrimental to the minor’s care.



- STD – Parental Notification. In the diagnosis, treatment or counseling to a minor who has come into contact with any sexually transmitted disease, providers may but are not required to inform the parent or guardian concerning treatment.
- Alcohol/Drug Abuse – Parental Notification. Persons providing counseling to a minor who abuses, or has a family member who abuses drugs or alcohol *are prohibited* from informing the parent or guardian without the minor’s consent unless necessary to protect the safety of the minor or another person.
- HIV Test Results. In the case of HIV test results, the encourages but does not require reasonable efforts to notify the parent if the provider believes such to be in the minor’s best interest and the provider has been unsuccessful in persuading the minor to do so.
- Mental Health Services – Parental Access and Notification. (See above discussion.)

Consent by Minors to Medical Procedures Act, 410 ILCS 210/0.01 et seq; AIDS Confidentiality Act, 410 ILCS 305/9.