



MENTAL HEALTH CARE FOR CHILDREN WITHOUT PARENTAL PERMISSION

On May 16, 2019, Governor Polis signed into law Colorado House Bill 19-1120, which enables minor clients to obtain mental health services without parental permission starting at 12 years old. The law took effect upon signature.

The stated legislative intent behind House Bill 19-1120 was to reduce the rising rate of youth suicides by allowing mental health practitioners to work with youth to teach them functional coping skills, increase communication and strengthen the bond with their parent(s), and build ongoing nonclinical support for youth to use to manage their mental health concerns. The new law does not apply to registered psychotherapists.

Prior to the passage of House Bill 19-1120, the Colorado Behavioral Health statute provided that minors 15 years and older could seek mental health services without parental permission.

House Bill 19-1120 added to the Mental Health Practice Act a provision allowing minors age 12 and older to obtain psychotherapy services "with or without the consent of the minor's parent or legal guardian." Under the statute, before a minor 12 years or older can engage in treatment without parental consent, the practitioner must first determine that the minor is knowingly and voluntarily seeking the psychotherapy services and that the services provided are clinically indicated and necessary to the minor client's well-being. These must be documented in the minor client's clinical chart.

The new law has far-reaching practical consequences on the provision of psychotherapy to court-involved families. Minors ages 12 and up now hold the authority to consent (or refuse to consent) to receiving psychotherapy services. Practically speaking, practitioners should now obtain written consent from each of their minor clients ages 12 and up prior to providing psychotherapy services. Informed consent should also include mandatory disclosure requirements. Practitioners should take care to include all necessary explanations and disclosures required under statute in a way that is appropriate and understandable for the age of the client. Informed consent and mandatory disclosure forms should be reviewed and updated to ensure compliance with the additional requirements of the new statute.

The new law also affects the disclosure of a minor client's clinical information to their parent(s)/guardian. Minors over the age of 12 now hold the psychotherapist-client privilege and parents are no longer able to obtain copies of their children's mental health records by signing an authorization on their behalf so long as their children are 12 years old or older. Further, the new law requires that practitioners obtain the minor's permission before letting the parent(s)/guardian know that psychotherapy services are being provided to the child. The law allows for disclosure of the fact of psychotherapy services only with the permission of the client or if the practitioner determines that the minor is unable to manage his or her own treatment or care.

This new law requires that practitioners engage their minor clients in a discussion about the importance of involving and notifying their parent(s)/guardian and to document all attempts to contact the parent(s)/guardian. Documentation in this regard must include the time the attempt was made, whether the attempt was successful, and/or the reason the practitioner deemed it inappropriate to contact the minor's parent/guardian, for example, if the practitioner deems it detrimental to the child's therapeutic progress. The new law requires that practitioners report to the minor's parent(s)/guardian any communication made by the child of a clear and imminent threat to commit suicide. In addition, practitioners remain subject to the duty to warn statute, which was unaltered by the new law, and must also report such communications to the appropriate authorities.

The practical implications of the new law remain unknown and practitioners may find themselves in a precarious spot with respect to the provision of psychotherapy services to minors ages 12 and up if they do not follow the statutory guidelines. We encourage practitioners to take time to review and become familiar with the requirements of the new law and to contact an attorney with any questions or concerns regarding implementation.

If you have any questions about this update, please contact Chad Gillam, Andy Nickel, or Ariana Busby.