

“Who is the legal patient representative?” or “patient representatives”?

Scenario: A 16 year old patient arrives at the reception desk to check in for a new appointment. The reason for the visit is evaluation of lump / growth that may need to be biopsied. The patient is accompanied by an adult who is not the patient’s parent or guardian. You discreetly learn that the patient is in the care of the department of children and families but there is no paperwork clarifying whether the parent or DCF is the legal contact for health care decisions. You are not sure whether or not the patient should be seen for today’s visit, because this type of problem is potentially serious and there is no-one to sign the permission to treat or consent form should a biopsy be performed.

Question: What guidance is there to help you when minors or other types of patients with diminished capacity for decision-making arrive for visits without an identified “legally authorized” representative?

Answer: These types of scenarios are not uncommon. It is helpful to prepare in advance (when possible) to request that a parent accompany a minor child, or sign the forms ahead of time, or otherwise be available to provide permissions over the telephone. When parents are divorced, it may be necessary to clarify the “custodial” parent vs a non-custodial parent or step parent to assure the permission is from the legally responsible party.

Also, keep in mind while minor children (under 18 years) generally cannot sign the “Permission to Treat” form, there are exceptions for legally-emancipated minors, a pregnant minor seeking prenatal care, or minor seeking treatment for sexually transmitted disease, HIV, mental health care, or for substance abuse (alcohol or drugs).

When DCF is involved, it does not mean necessarily that the parent is no longer the decision-maker for health care, so this needs to be clarified with DCF caseworker and supporting documentation is helpful to have in the medical record. However, the facts should be rechecked at subsequent visits as the parents rights or DCF involvement may change over time. If you can’t determine who is the “legal representative” before the appointment – then it is really up to the physician to determine the appropriateness of the visit and what is or is not performed. For a 16 year old patient, the assent of the patient is also a consideration – as the ability to participate in their own care is an important consideration. Many times complex social and family issues complicate the “legal” aspects of care to these minors, and we need to be sensitive to the difficult circumstances that surround them. What is the “right” thing to do most often relies on good judgment and the best interests of the patient – and this is the role of the physician involved in the care.

The Compliance Office, UCHC Assistant Attorney Generals, and the Risk Management areas are sources of guidance for these situations – whether the scenario is a minor or adult of diminished capacity. Additionally, there are policies that may be helpful to review regarding patient privacy, patient rights, informed consent, advance directives, and living will, health care representative and conservator of the person.