

# Appendix A: Laws and Regulations

## Summary of Laws

Law	What It Addresses
<a href="#"><u>The Health Insurance Portability and Accountability Act of 1996 (HIPAA)</u></a>	For primary care providers, behavioral health care providers and patients Covers exchange of information between providers and provides patients rights around exchange of information
<a href="#"><u>Family Educational Rights and Privacy Act (FERPA)</u></a>	Applies to educational entities and anyone receiving federal Department of Education funds. Covers the release of information from a student's educational record
<a href="#"><u>Individuals with Disabilities Education Act (IDEA)</u></a>	Covers states and localities
<a href="#"><u>Title 42 Code of Federal Regulations, Part 2</u></a>	Covers federally assisted alcohol and drug programs Covers the rules around release of information by these programs
<a href="#"><u>Protection of Pupil Rights Amendment (PPRA)</u></a>	Applies to educational institutions Relates to student participation in certain surveys

<p>Massachusetts General Laws chapter 112</p>	<p>Sections 12 E and S <a href="#">M.G.L. chapter 112, section 12E</a> <a href="#">M.G.L. chapter 112, section 12S</a> Consent to treatment</p>
	<p>Section 129A <a href="#">M.G.L. chapter 112, section 129A</a> Psychologists and clients communication (and MGL Chapter 233, section 20 B exception to Section 129 A) <a href="#">M.G.L. chapter 233, section 20B</a></p>
	<p>Sections 135 A and B <a href="#">M.G.L. chapter 112, section 135A</a> <a href="#">M.G.L. chapter 112, section 135B</a> Social Workers communication</p>
	<p>Section 172 <a href="#">M.G.L. chapter 112, section 172</a> Allied Mental Health Providers communication <a href="#">M.G.L. chapter 112 section 172A</a></p>
	<p>Section 12 A ½ <a href="#">M.G.L. chapter 112, section 12A 1/2</a> Physicians reports of sexual assault</p>
	<p>Section 12 CC <a href="#">M.G.L. chapter 112, section 12CC</a> Patient's Access to Medical Records</p>

	<p>Section 12 (and chapter 111, section 119)  <a href="#">M.G.L. chapter 111, section 119</a>  <a href="#">M.G.L. chapter 112, section 122</a></p> <p>Health care providers reporting information about Sexually Transmitted Diseases</p>
General Laws chapter 233	<p>Sections 20 K and J  <a href="#">M.G.L. chapter 233, section 20K</a>  <a href="#">M.G.L. chapter 233, section 20J</a></p> <p>Domestic Violence Counselors and Sexual Assault Counselors</p>
General Laws chapter 111	<p>Sections 70 F and G  <a href="#">M.G.L. chapter 111, section 70F</a>  <a href="#">M.G.L. chapter 111, section 70G</a></p> <p>Health care providers and confidentiality of HIV and genetic testing</p>
General Laws chapter 123	<p>Section 36 B Licensed Mental Health Professionals obligation to report information  <a href="#">M.G.L. chapter 123, section 36B</a></p>
General Laws, chapter 93H	<p><a href="#">M.G.L. Chapter 93H</a>  Protection of personal information of MA residents</p>
Regulations	<p>Department of Public Health  <a href="#">105 C.M.R. sections § § 164.083-164.085</a></p> <p>Licensed substance abuse programs (confidentiality of records)</p>
	<p>Department of Mental Health  <a href="#">Department of Mental Health</a></p> <p>Mental health facilities (confidentiality of records)</p>

Other	<p>Department of Elementary and Secondary Education  <a href="#">603 C.M.R. 23.00</a>          Schools (student records)</p> <p>Mature Minor Rule  <a href="#">Commonly Asked Questions About the Treatment of Minors (2012)</a></p> <p>Board of Registration of Allied Mental Health and Human Services Professionals Advisory  <a href="#">Policy on Distance, Online, and Other Electronic-Assisted Counseling</a></p> <p>Board of Registration of Psychologists Advisory  <a href="#">Practicing with children and families in Massachusetts where parents may be separate, divorced, or never married</a></p>
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# Federal Laws

## 1. The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

### HIPAA Privacy Rule

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. The Privacy Rule was initially published in 2000 and then later updated in 2003 and 2013. (Thorpe and Rosenbaum, *Understanding the Interaction between EPSDT and Federal Health Information and Privacy and Confidentiality Laws*, Sept 2013, p. 10)

The HIPAA Privacy Rule provides federal protections for health information, gives patients rights for sharing the information and makes rules for who and how others can receive the information.

Under HIPAA, health care providers are able to share certain information with other health care providers, without patient consent, when necessary for treatment of the patient. Providers are bound to share only that information that is ‘minimally necessary’ for the purpose that the information is being shared. However, as noted elsewhere in this Guide, it is always best for health care providers to talk to families about the need for sharing information, and obtaining consent for that sharing.

### HIPAA Security Rule

In 2009, new legislation was enacted dealing with health information technology and providing privacy and security standards for an individual’s health care record. The Health Information Technology for Economic and Clinical Health (HITECH) Act was enacted under the American Recovery and Reinvestment Act on February 17, 2009. Under HITECH, covered entities (defined to include health care providers, health plans and health care clearinghouses) must ensure the confidentiality, integrity and availability of all electronic protected health information that the covered entity (or a business associate) creates, receives, maintains or transmits.

### For More Information

HIPAA can be found at Pub. L. No. 104-191, 110 Stat. 1936 (1996). The Privacy Rule is located on the U.S Government Printing Office website at 45 CFR [Part 160](#) and Subparts A and E of [Part 164](#). The Security Rule is located at 45 CFR [Part 160](#) and Subparts A and C of [Part 164](#).

HIPAA summaries are available online at the U.S. Department of Health and Human Services website and the Bazelon Center for Mental Health Law:

- [HHS General Summary](#)
- [HHS Privacy Summary](#)
- [Bazelon HITECH Summary](#)

The Massachusetts Department of Health and Human Services has answers to [Frequently Asked Questions on HIPAA and School Health](#).

American Medical Association has information to help physicians comply with HIPAA rules: [HIPAA: Health Insurance Portability and Accountability Act](#)

US Dept of HHS Office for Civil Rights has information about sharing information for a patient being treated for a mental health condition: [HIPAA Privacy Rule and Sharing Information Related to Mental Health Guidance](#)

## 2. Family Educational Rights and Privacy Act (FERPA)

FERPA protects the privacy of students' "education records." FERPA applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. The FERPA law does not apply to private schools.

For purposes of this Guide, we will call these entities "schools". A school may not have a policy or practice of disclosing the education records of students, or personally identifiable information from education records, without a parent or eligible student's written consent.

At the elementary or secondary level, educational records include:

- A student's health records, including immunization records, maintained by the school
- Records maintained by a school nurse
- Records that schools maintain on special education students, including records on services provided to students under the Individuals with Disabilities Education Act (IDEA)

When a medical clinic is operating at a school, whether FERPA or HIPAA rules apply to the clinic's records depends on whether the clinic is carrying out responsibilities of the school, under an agreement with the school. If it is, then FERPA laws apply. If not, then HIPAA laws apply to that clinic's records. (Thorpe and Rosenbaum,

*Understanding the Interaction between EPSDT and Federal Health Information and Privacy and Confidentiality Laws*, Sept 2013, p 15)

Under FERPA, parents and eligible students have the right to inspect and review the student’s education records and to seek to have them amended in certain circumstances.

### **For More Information**

The FERPA law: Department of Education. Family Educational Rights and Privacy; Final Rule. 20 U.S.C. § 1232g; 34 CFR Part 99. This link contains a summary of [FERPA](#).

Education Council LLC, 2011. Describes changes made to 2011 regulations compared to previous versions: [U.S. Department of Education Final FERPA Regulations: Advisory and Overview](#).

US HHS, US DOE (2008) contains information on the intersection of HIPAA and FERPA on School Health Records: [Joint Guidance on the Application of the FERPA And the HIPAA To Student Health Records](#).

A US Dept. of Education brochure contains information for parents on their rights regarding education records: [Parent’s Guide to the Family Educational Rights Act: Rights Regarding Children’s Education Records](#).

## **3. Individuals with Disabilities Education Act (IDEA)**

“The Individuals with Disabilities Education Act (IDEA) finances educational and early intervention (EI) services for infants, toddlers and pre-school aged children..... Health records maintained by schools or their agents such as a school nurse or other health practitioner working for or under contract with a school (are) subject to the FERPA standard, and shielded from disclosure to third parties (including...providers) without written consent, except in narrow circumstances. Similar standards apply to EI services; safeguards must be in place to insure the confidentiality of personally identifiable information.” (20 U.S.C. section 1439(a)(2))

(Excerpted from Thorpe and Rosenbaum, *Understanding the Interaction between EPSDT and Federal Health Information and Privacy and Confidentiality Laws*, Sept 2013, p 19.)

The Part C of the IDEA funds education/early intervention services for infants and toddlers through age 2 who have developmental delays or who have been diagnosed with physical or mental impairments likely to lead to development delays. Part B of the IDEA ensures that children with disabilities ages 3-21 receive special education and related services in school.

## For More Information

[PDF](#) / [HTML](#)

Though IDEA is a federal law, Massachusetts has enacted a law, and promulgated regulations governing special education in the Commonwealth. The Massachusetts law is codified in Massachusetts General Law Chapter 71B. The related state regulations are available in the [Code of Massachusetts Regulations at 603 C.M.R 28](#).

## 4. Title 42 Code of Federal Regulations: Public Health Part 2 — Confidentiality of Alcohol and Drug Abuse Patient Records

In the substance abuse field, confidentiality is governed by federal law (42 United States Code, § 290dd-2) and associated regulations (42 Code of Federal Regulations, Part 2). This law and these regulations outline under what limited circumstances information about the client’s treatment may be disclosed with and without the client’s consent.

42 C.F.R., 2 applies to all records relating to the identity, diagnosis, prognosis, or treatment of any patient in a substance abuse program that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States. It applies to any program that:

- 1) holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral or
- 2) is regulated or assisted by the federal government (42 U.S.C. § 290dd-2; 42 C.F.R. § 2.11-2.12; FAQ2).

42 C.F.R., 2 does not apply to state mandated child-abuse-and neglect reporting (42 C.F.R. § 2.12(c)(6)); when cause of death (42 C.F.R. § 2.15(b)) is being reported; or with the existence of a valid court order.

Determining when 42 C.F.R., 2 is applicable and how to legally access information about substance abuse treatment requires practitioners to work through a series of questions.

Generally speaking, “Part 2 sets a written consent standard for the disclosure of information contained in virtually all patient drug and alcohol health records maintained by federally funded programs” (Excerpted from Thorpe and Rosenbaum, *Understanding the Interaction between EPSDT and Federal Health Information and Privacy and Confidentiality Laws*, Sept 2013, p 16.)

Massachusetts law requires state licensed programs to follow 42 C.F.R. Part 2; see 105 C.M.R. 164.084, concerning client-specific information.

### For More Information

Visit [The U.S. Government Printing Office Electronic Code of Federal Regulations](#) website.

## 5. Protection of Pupil Rights Amendment (PPRA)

PPRA provides children and their families with certain privacy protections by requiring schools to notify parents in advance and to obtain written parental consent before any minor student is required to participate in any Educational Department survey that reveals certain information, including information regarding political affiliation, mental and psychological problems, sexual behavior and attitudes, certain behaviors, relationships, income and religion.

### For More Information

The PPRA is available at 20 U.S.C. § 1232h; 34 CFR Part 98.

U.S. Department of Education contains a summary of PPRA:

[Protection of Pupil Rights Amendment \(PPRA\)](#)

## Massachusetts Laws

### 6. Massachusetts General Law Chapter 112

Chapter 112 of the Massachusetts General Laws governs the registration of certain professionals, and contains several sections that address the issue of consent to treatment and release of information. These sections, which can be found by visiting the General Court of The Commonwealth of Massachusetts website, are:

#### Consent to Treatment

- Drug dependent minors consent to treatment: [M.G.L. chapter 112, section 12E](#)

A minor, age 12 or over, who is diagnosed with drug dependency by two or more physicians may give consent to medical care related to this diagnosis, the consent of a parent or guardian is not required, and will not be liable for payment for the services. (This does not apply to methadone maintenance therapy.)

- Consent to abortion; form; persons less than 18 years of age: [M.G.L. chapter 112, section 12S](#)

No physician may perform an abortion without written informed consent using a form from the commissioner written in a manner designed for easy understanding by laypersons. If a pregnant woman is under 18 and unmarried, a physician cannot perform an abortion without parental or guardian consent.

The consent form is confidential and shall not be released to anyone without the consent of the woman or proper judicial authority EXCEPT that it may be released without these permissions to the woman herself, the operating physician, or the parents in cases requiring consent (i.e., if the woman is under the age of 18 and has not married). In the event that a woman under age 18 and not married does not receive parental consent (either because they are unable or unwilling to provide it, or because she does not request it) and she petitions in court for authorization of the abortion, these court proceedings will be confidential. A record of the proceedings will be maintained including the evidence and judge's findings.

## Communications

- Confidential Communications: Psychologists and clients: [M.G.L. chapter 112, section 129A](#)

Communications between licensed psychologists and the individuals with whom the psychologist engages in the practice of psychology are confidential except for in circumstances noted in the provisions of section 20B of chapter 233 with express written consent of the patient, or in circumstances that protect the rights and safety of others.

Circumstances that protect the rights and safety of others include, among others, if a patient is a danger to self or others, and refuses appropriate treatment. Follow the link below to the law for the complete list of exceptions to confidentiality.

If a psychologist must break confidentiality in order to collect payment from a patient, disclosure must be limited to the nature of services provided, the dates of services, the amount due for services and other relevant financial information, or to rebut assertions regarding his/her competence, or in "other situation as shall be defined in the rules and regulations of the board."

- Privileged communications: patients and psychotherapists exceptions: [M.G.L. chapter 233, section 20B](#)

In any court proceeding, a patient can refuse to disclose or prevent a witness from disclosing any communications between patient and psychotherapist relative to the diagnosis or treatment of the patient's mental or emotional condition. Chapter 233 lays out the types of communication when this privilege does not apply, such as if the patient is a threat to himself or others, and in certain child custody and adoption cases. The complete list of exceptions is in the link to this law above.

- Confidential Communications: social Workers: [M.G.L. chapter 112, section 135A](#)  
Communications between social workers and clients are confidential. At the start of the professional relationship, the social worker must inform the client that communication is confidential and the limitations of confidentiality. Limitations to confidentiality include when the client (or client's guardian) provides express written consent.
- Exceptions to Confidential Communications: Social Workers: [M.G.L. chapter 112, section 135B](#)  
Massachusetts General Laws Chapter 112, Section 135B contains exceptions to the general rule. The privilege does not apply in all situations, such as when a social worker determines that a client needs hospital treatment, or that the client is a threat to the safety of him or herself or others. For additional information on when the privilege does not apply, see the text of the law, which can be found by following the link above.
- Communications between allied mental health and human services professionals: [M.G.L. chapter 112, section 172](#)  
Any communication between an allied mental health or human services professional and a client is confidential in all circumstances, with some exceptions, such as when the client reveals information about a crime or harmful act, or in some court cases.
- Client of a mental health counselor has privilege against disclosures in court, legislative, or administrative proceedings : [M.G.L. chapter 112 section 172A](#)  
The client of a licensed mental health counselor has the right to refuse to disclose or to prevent a witness from disclosing any communication between the client and mental health counselor related to the diagnosis or treatment of a client's condition in a court, legislative or administrative proceeding. If a client is not able to waive the privilege, a guardian can be appointed to do so. The statute

lists certain communications where this privilege does not apply such as when a client is in need of hospitalization, or when the client is a threat to himself or others. To find a list of all limitations on this privilege, follow the link to the law above.

- Reporting treatment of victim of rape or sexual assault: [M.G.L. chapter 112, section 12A 1/2](#)  
Every physician attending, treating, or examining a victim of rape or sexual assault, or when such a case is treated in a hospital or other institution, the manager or other person in charge must report the case to the department of criminal justice and the police department in the town where the incident occurred. The report must not include any of the victim's identifying information, including his or her name or address.
- Patient's Access to Medical Records: [M.G.L. chapter 112, section 12CC](#)  
A patient is allowed access to their medical records within 30 days of the request, provided documentation of the reason for the request is supplied. (Sometimes, a fee may be charged for the records.) If a psychotherapist believes supplying the entire medical record would adversely affect the patient's well-being, the clinician can make a summary of the record available to the patient instead. If the patient requests the entire record, despite the clinician's determination of harm to the patient's well-being, the clinician must make the entire record available to the patient's attorney, with the consent of the patient, or to another clinician as designated by the patient.
- Protections for Information Related to Sexually transmitted diseases: [M.G.L. chapter 111, section 119](#)  
Hospital, dispensary, laboratory and morbidity reports and records pertaining to sexually transmitted diseases shall not be public records, and the contents of these records shall not be divulged, except upon proper judicial order or to a person whose official duties, in the opinion of the commissioner, entitle him to receive information contained therein.

## 7. Massachusetts General Laws Chapter 233 Governs Release of Information in Court Cases

- Domestic violence counselor: [M.G.L. chapter 233, section 20K](#)  
A domestic violence victim's counselor shall not disclose information transmitted

in confidence between a victim and a counselor without the prior written consent of the victim, except in certain circumstances. For a list of these circumstances, follow the link above to the text of the law.

- Sexual assault, confidential communications with sexual assault counselor: [M.G.L. chapter 233, section 20J](#)

A sexual assault counselor shall not disclose information transmitted in confidence by and between a victim of sexual assault and a sexual assault counselor, without the prior written consent of the victim. There are some limitations to this general rule. Follow the link above to the text of the law for the full list of limitations.

## 8. Massachusetts General Law Chapter 111 Governs Issues Related to Public Health

- HIV tests: [M.G.L. chapter 111, section 70F](#)

No one can be tested for HIV without his or her consent. A facility, physician, or health care provider can't test without first obtaining that person's verbal informed consent. A health care professional cannot disclose the results of the test to anyone without the subject's written consent or disclose the nature of the test without consent. The HIV test written consent must be distinguished from consents for the release of any other medical information.

- Confidentiality of Genetic Testing and Reports: [M.G.L. chapter 111, section 70G](#)

No facility and no physician or health care provider shall test for genetic information without written consent. The results of the test can not be released without written consent, except in certain situations, which can be found by following the link above to the law.

## 9. Massachusetts General Laws chapter 123 Governs Issues Related to Mental Health

- Obligation of mental health professionals to report information about a potentially dangerous patient: [M.G.L. chapter 123, section 36B](#)

A licensed mental health professional is NOT required to take reasonable precautions to warn or in any way protect a potential victim(s) of his/her patient, and NO cause of action is imposed against a licensed mental health professional for failure to warn or protect a potential victim(s) of his/her patient except in

certain situations, which are listed in the law, which can be found by following the link above.

## **10. Mass General Law 93H Requires Regulations to Protect Any MA Resident’s Personal Information**

[M.G.L. Chapter 93H](#)

## **Massachusetts Regulations**

The following is a sample of regulations governing entities in the state. Regulations in Massachusetts are found in the Code of Massachusetts Regulations (C.M.R.) and can be accessed at [www.lawlib.state.ma.us](http://www.lawlib.state.ma.us)

### **11. Department of Public Health**

Protections for Information Related to Substance abuse: [105 C.M.R. sections § § 164.083-164.085](#))

This regulation requires licensed substance abuse treatment programs to maintain thorough, up-to-date records for each patient in a confidential and secure manner. It gives clients (or someone designated in writing by the client) the right to review their records.

This regulation also requires substance abuse treatment centers to have written policies about controlling access to certain information in records, to train staff about confidentiality requirements as part of their orientation and to inform clients in writing during client orientation about these policies.

### **12. Department of Elementary and Secondary Education Regulations**

Student Records: [603 C.M.R. 23.00](#)

Both schools and School Based Health Centers must provide services in a manner that ensures the privacy of students and their families. These regulations note that authorized school personnel are allowed access to the student records of students when such access is required in the performance of official duties, without obtaining consent of the eligible student or parent/guardian. It is not permissible, however, to give a third party access to any information from a student record without the specific, informed, written consent of the student or parent/guardian.

### For More Information

See Chapter 2 of this Guide for additional information about regulations governing confidentiality of health records and communications.

A summary of Massachusetts regulations on school records can be found at [Children's Law Center of Massachusetts, Student Records](#), website.

## 13. Department of Mental Health

Regulations that govern licensing and operations of mental health facilities provide guidance on confidentiality of records and inspection by a Department of Mental Health client and can be found on their website: [Department of Mental Health](#).

104 C.M.R. § 27.17(7) requires each facility to ensure confidentiality, integrity, and availability of individual records; except as provided by that section. All records relating to any persons admitted or treated by the facility shall be private and not open to public inspection.

104 C.M.R. § 27.17(8) permits a licensed health care professional to deny patient access to records in certain circumstances, which are subject to appeal; a client who is 16 or 17 years old who admitted him or herself may inspect admittance records without consent of authorized representative; records of minor under age 18 who consented to emergency medical or dental care shall not be released except upon written consent of patient or a proper judicial order.

104 C.M.R. § 27.17(9) sets out rules for inspection of records by others who are not the patient, including health care providers and facilities in a medical emergency.

Regarding mature minors consenting to treatment:

Where, by operation of law pursuant to M.G.L. c. 112, §§ 12E or 12F, a minor is an emancipated minor entitled to consent to drug or medical or dental treatment and is competent to do so, he or she shall be entitled to consent in the same manner as an adult. Further, a facility or program may determine, pursuant to applicable Massachusetts law, that a minor is a mature minor and is therefore able to provide consent to treatment and may decide, in certain circumstances, not to notify the parents. Such determinations should be made by facilities and programs in consultation with their legal counsel.

## 14. Standards for the Protection of Personal Information of Residents of MA

This regulation sets minimum standards in connection with protecting personal information of MA residents contained in paper or electronic records.

[201 C.M.R. 17.00](#)

## Other Information

### 15. Mature Minor Doctrine

There is no uniform rule that gives minors under 18 mature minor rights. As a general rule, minors (under 18) are not legally able to consent to their own mental health treatment and medical care.

In the 1977 case *Baird v. Bellotti*, the Massachusetts Supreme Judicial Court adopted the “mature minor” doctrine, which, when applied to mental health treatment, holds that a minor determined by the therapist to be capable of understanding the nature and consequences of the treatment to be provided may be deemed “mature,” and thereby capable of giving consent. While a [provider] may determine that a child is a mature minor, that determination may not constrain the [provider] from notifying the client’s parent(s) if the therapist and the minor client establish those ground rules through written informed consent. Informed consent statements should always be in writing and should state the circumstances, if any, in which the [provider] will disclose information to parents.

Visit the Posternak Blankstein & Lund LLP website to for answers to [Commonly Asked Questions About the Treatment of Minors \(2012\)](#).

### 16. Board of Registration of Allied Mental Health and Human Services Professionals: Policy on Distance, Online, and Other Electronic-Assisted Counseling: Policy No. 07-03

This policy guideline was voted into effect on November 16, 2007 by the Board of Registration of Allied Mental Health and Human Services Professionals, and, like all guidelines, does not have the full effect of law. The guideline was developed in response to the increase in therapy and counseling services provided through electronic means in order to standardize care delivery through these electronic resources.

The guideline stipulates that all patient services rendered at a distance fall within the policies and regulations of the Board mentioned above, the delivery of services is considered to occur where the client is located and where the clinician is located, therefore if the patient is within MA even if the clinician is not, such services still fall under the jurisdiction of the Board.

Clinicians are expected to comply with all ethical practice guidelines as they apply to face-to-face counseling, to comply with professional association guidelines, and to have up-to-date training. Confidentiality and disclosure policies and practices are included in this policy guideline.

### **For More Information**

Access the guideline on The Official Website of the Office of Consumer Affairs & Business Regulation (OCABR):

[Policy on Distance, Online, and Other Electronic-Assisted Counseling](#)

[The American Counseling Association Code of Ethics](#) website

U.S. Health and Human Services website, Substance Abuse and Mental Health Services Administration: [Considerations for the Provision of E-Therapy](#)

## **17. Board of Registration of Psychologists Advisory Regarding Practicing with Children and Families in MA Where Parents May Be Separated, Divorced, Or Never Married**

The guideline was adopted on July 20, 2012 by the Board of Registration of Psychologists and can be found on the Board's website [Practicing with children and families in Massachusetts where parents may be separate, divorced, or never married](#).

Under this guideline, clinicians must:

- understand the custodial rights of parents to minors whose parents are separated, divorced, or never married,
- not break confidentiality of the minor even if the parents ask them to – but only under a court order or through signed consent of the minor,
- refrain from initiating therapy with a minor without consent from both parents in the absence of protective issues or mitigating circumstances,

- understand that sole legal custody is rarely awarded in MA except in circumstances of the death of a parent, protective issues, or unmarried parents and in these circumstances, the clinician should inquire to familial circumstances before deciding whether to reach out to the non-custodial parent for consent or involvement in treatment, and
- the same clinician should not perform both psychotherapy and child custody evaluation on the same minor.

Informed consent from both parents prior to initiating child treatment that guarantees confidentiality from the parents should be obtained.

In general, working with minors with divorced, separated, or never married parents requires experience and expertise and thus clinicians should seek advice and consultation from other practitioners when needed.