

## § 1.465

ineligible minor patient until the minor patient consents to the disclosure necessary to obtain reimbursement for services from a third party payer.

(c) *State law requiring parental consent to treatment.* (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with § 1.475 of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the appropriate VA facility director under paragraph (d) of this section.

(d) *Minor applicant for service lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the appropriate VA facility director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under § 1.475 of this part to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well-being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other

## 38 CFR Ch. I (7-1-08 Edition)

person authorized under State law to act in the minor's behalf.

(Authority: 38 U.S.C. 7334)

### § 1.465 Incompetent and deceased patients.

(a) *Incompetent patients other than minors.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under §§ 1.460 through 1.499 of this part may be given by a court appointed legal guardian.

(b) *Deceased patients*—(1) *Vital statistics.* Sec. 1.460 through 1.499 of this part do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as being treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia is subject to §§ 1.460 through 1.499 of this part. If a written consent to the disclosure is required, the Under Secretary for Health or designee may, upon the prior written request of the next of kin, executor/executrix, administrator/administratrix, or other personal representative of such deceased patient, disclose the contents of such records, only if the Under Secretary for Health or designee determines such disclosure is necessary to obtain survivorship benefits for the deceased patient's survivor. This would include not only VA benefits, but also payments by the Social Security Administration, Worker's Compensation Boards or Commissions, or other Federal, State, or local government agencies, or nongovernment entities, such as life insurance companies.

(3) *Information related to sickle cell anemia.* Information related to sickle cell anemia may be released to a blood relative of a deceased veteran for medical follow-up or family planning purposes.

(Authority: 38 U.S.C. 7332(b)(3))