Consent and Confidentiality Considerations for Providing Sexual and Reproductive Health Care to Minors

Background

For health centers caring for adolescents, navigating the consent and confidentiality issues around the provision of sexual and reproductive health care can be challenging. Health centers often encounter minors (i.e., individuals under the age of 18) seeking or needing sexual and reproductive health care services such as contraception, pre-natal care, and treatment of sexually transmitted infections (STIs). Typically, a minor's parent or legal guardian acts as the minor's representative to consent for health care services. As a function of that consent, the parent or legal guardian has access to the minor's medical record. As such, minors may be reluctant to be open with the care team about the need for these services for fear that their parents will find out that they are (or plan to become) sexually active, which for some adolescents can have devastating effects including physical or emotional abuse, eviction from the family home, or – particularly in lesbian, gay, bisexual, and transgender (LGBT) youth who may be disclosing their gender identity or sexual orientation – total parental rejection. To ensure confidential access to these important services for minors, some states permit minors to consent to some or all types of sexual and reproductive health care services independently of a parent or legal guardian.

Consent is just the first hurdle to clear, however. Even in situations in which minors can consent to their own sexual and reproductive health care services, many providers are unsure of how best to protect confidentiality surrounding those services since parents have general access to their minor child's medical records. For example, if a minor has an intrauterine device (IUD) inserted, the minor's parent may be able to see documentation of that service anytime the parent accesses the minor's medical record (e.g., through a patient portal). Similarly, if a minor obtains STI testing and uses their parents' insurance to pay for the tests, the insurance company will typically send an Explanation of Benefits (EOB) to the parents, jeopardizing confidentiality.

Strategies to Assess a Minor's Ability to Consent

Unless the provider receives Title X funding, addressing questions about consent typically requires analysis of applicable state law. If state law permits a minor to consent to certain health care services, providers need to be familiar with the specific requirements of such laws, which can be complex. For example, some states permit minors of any age to consent to reproductive health services, while others allow consent only once the minor has reached a certain age. Other factors to consider include the legal status of the minor and potential limits on the range of services (e.g., minors may only be able to consent to certain reproductive health services, as opposed to the whole host of reproductive health services offered).

1. Confirm understanding of relevant state law in consultation with legal counsel. Remember that some health care services to which minors can consent are conditioned upon a minor's age or other circumstances.
2. Create or revise health center policies on providing care to minors. Comply with state law requirements and consider the health center's patient population.
3. Train front desk staff on relevant laws so that they are available to assist adolescents who ask about consenting to their own health services. This training should be conducted during new employee orientations, as well as annually.
4. Thoroughly and regularly train providers on minor consent laws. If the health center has regular provider meetings, ensure that the topic is covered at least annually.

CATEGORIES OF MINORS OFTEN PERMITTED BY STATE LAW TO CONSENT

Emancipated minors are generally permitted to consent for their own health care services. Some states have laws describing the circumstances in which a minor is considered emancipated, but many do not. Factors typically considered when analyzing whether minors are emancipated include whether they support themselves, receive public assistance in their own names, have virtually no contact with their parents, and/or whether they have voluntarily and permanently left their childhood homes. Depending on state law, documentation of emancipation may be necessary (for example, a copy of a court-ordered emancipation or proof of public assistance benefits showing the minor's name).

The "mature minor" doctrine permits older adolescents (typically at least 14 years old) to give informed consent and shields providers from liability if the care is provided in a non-negligent manner, is within the mainstream of medical opinion, and is not high risk. This doctrine has been made law or accepted by the courts in some states, but not all.

Married minors and minor parents of children are often able to consent for their own health care services. Most states permit these categories of minors to consent for health services, but providers should confirm the applicable law in their state.

Strategies to Preserve Confidentiality

If a provider is able to legally obtain consent for services from a minor, questions of confidentiality obligations remain. These questions relate to a provider's obligation to notify the minor's parent or legal guardian of the care the minor received; how to try to maintain confidentiality when the minor is insured under the parent's policy and the parent receives an EOB; and how the provider should document the minor's confidential services when a parent has the right to access the minor's medical record. The answers to these questions often depend on a particular state's law, the design of a particular electronic medical record software system, or an insurance company's policies on accommodating a patient or provider's request for confidential communications.

1. Provide thorough training on federal and state confidentiality laws to medical records information staff and the care team.
2. Encourage the care team to directly engage and educate adolescents and their parents about adolescents' rights to confidential health services. These conversations can occur over a series of appointments. For example, when a minor comes in for a physical examination prior to the start of each school year, the provider can relay age-appropriate reproductive health information to both the parent and minor. The discussion should include information about the types of services to which minors have the right to consent on their own.
3. Unless prohibited under state law, consider establishing a policy that patient portals will not be created for patients under the age of 18. Since patient portals are the easiest way to view medical information, eliminating remote access to records may help to keep adolescent health information confidential. Note, however, that removing access to a patient portal for minors may have implications for meaningful use attestation and patient-centered medical home recognition.
4. Check with state law to see if there are ways the health center may work with insurance companies to avoid having EOBs sent to an adolescent's house without their consent. For example, there are currently three states with formal policies requiring insurance companies to honor patient requests for confidential communications about sensitive health care services.[1]

Relevant Federal Confidentiality Laws

Title X

Title X is a federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services. Services funded in whole or in part by Title X funds must be provided to minors of any age without regard to parental consent or notification. State law cannot restrict these protections.

HIPAA

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Privacy Rule provides patients with important privacy rights and protections with respect to their health information, including controls over how their health information is used and disclosed by health plans and health care providers. It sets a "floor" for protecting health information, meaning that states may have privacy laws with protections that are stronger than HIPAA's. Under HIPAA, the parents of an unemancipated minor are considered to be the minor's personal representative, meaning that the parents "stand in the shoes" and act on behalf of the minor.

- There are three situations in which a parent is *not* the personal representative of his or her minor child: (1) when state or other law does not require the consent of a parent before a minor can obtain a particular health care service and the minor consents to such service; (2) when someone other than the parent is authorized by law to consent to the provision of a health care service to a minor and that adult provides such consent; and (3) when a parent agrees to a confidential relationship between the minor and a health care provider. In any circumstance, HIPAA defers to state or other applicable laws that expressly address the ability of the parent to obtain health information about a minor child.
- HIPAA permits an individual who pays out-of-pocket for a service to request that a covered entity not disclose the protected health information related to that service, as long as the disclosure is not otherwise required by law. If those conditions are met, providers must grant the individual's request.

Medicaid

Like Title X, Medicaid prohibits requirements of parental approval for the provision of family planning services to minors and requires that such care remain confidential.[2]

Health Center Confidentiality Regulation (42 C.F.R. §51c.110)

Health centers have a confidentiality regulation that is very similar to the Title X confidentiality regulation. The regulation does not impact a minor's legal ability to consent to services; it merely requires that such services, if rendered, must remain confidential.

Resources

- State Policies in Brief: An Overview of Minors' Consent Law
- The National District Attorneys Association's Survey of Minor Consent Laws to Medical Treatment
- Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies
- Protecting Adolescent Confidentiality Under Health Care Reform: The Special Case Regarding Explanation of Benefits
- The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges
- Confidentiality, Third-Party Billing, & the Health Insurance Claims Process: Implications for Title X
- Issue Brief: Adolescent Health Coverage and Access to Care

References

[1] Tebb, K.P., Sedlander, E., Pica, G., Diaz, A. Peake, K., Brindis, C.D. Protecting Adolescent Confidentiality Under Health Care Reform: The Special Case Regarding Explanation of Benefits (EOBs): Philip R. Lee Institute for Health Policy Studies and Division of Adolescent and Young Adult Medicine, Department of Pediatrics, University of California, San Francisco; June 2014, at 14.

[2] 42 USC §§ 1396a(a)(7), 1396d(a)(4)(C); and 42 CFR § 441.20.