Confidentiality / Privacy in Adolescent Health Care

Mary S. Larew, MD
Department of Pediatrics
University of Iowa Children’s Hospital
Disclosure

“I have had no financial relationships with proprietary entities that produce health care goods and services and I am not discussing any pharmaceuticals or med procedures & devices that are off-label and unapproved for use by the US FDA.”
Objective

- To understand how Iowa law applies to confidentiality and privacy in the provision of health care services to adolescents.
Confidentiality

- Important for any clinician-patient relationship
- Is essential for teens
  - Demonstrates respect
  - Promotes developing autonomy
- Won’t access care if think you will tell parents
  - 70% would not seek family planning services if parents told,
  - 25% would have unsafe sex if unable to have confidential care
12 yr old asks for birth control pills
Case

- 13 year old girl dx’ed with Major Depressive Disorder. Doesn’t want parents to know because her mother is depressed due to recent divorce, and father is angry, “We don’t air our dirty laundry in public.”
Case

- 14 yr old male who wants to be tested “for all the STD’s” because he has had sex with several partners without using condoms.
15 yr old female comes in for evaluation of nausea, vomiting intermittently for 3 weeks. Has positive pregnancy test. Wants an abortion.
Case

- Father of the fetus is the high school track coach. “We’re in love and planning on getting married when I graduate.”
16 year old brought following minor MVA. She drinks “socially” at parties. Acknowledges that sometimes can’t remember driving home. “I can control my drinking - it’s not a problem.”
Case

- 14 yr old smoking pot, flunking out of school. Able to convince him to seek substance abuse counseling. He doesn’t want parents to know.
“Mature Minor Doctrine”

- *Unofficial* legal concept (& medical ethics doctrine) - can understand risks and benefits of treatment and therefore able to give informed consent

- Can provide care when parental consent is significant barrier

- <1/5 of states have mature minor exception to parental consent
Emancipated Minor

- Grants minors adult rights: entering into binding contracts, consenting to medical services
- Relieves parents of legal liability for support
- **Differs by state**
Emancipation Criteria - Iowa

- Age 18 (section 599.1)
- Marriage (599.1)
- Tried, convicted, and sentenced as an adult and is in custody can make decisions and give consent to medical care, related services, and treatment during the period incarceration (599.1)
Emancipation Criteria - Iowa

- Absent from minor’s parents, with the consent of parents, self-supporting, has assumed a new relationship inconsistent with being part of the family of the parents (252.16)
Emancipation in Iowa

- Minor may petition juvenile court if:
  - 16+ yrs & Resident of state
  - Not in care custody or control of state
  - Ability to manage personal affairs
  - Ability & commitment to obtain, maintain education, voc training, or employment
  - Living on own >3 months
  - Statement why home of parents not healthy or safe
  - Before hearing, will refer family to mediation (232C.1)
NOT Emancipation Criteria in Iowa Law

- Pregnancy &/or becoming a parent
- Runaway status
- Living away from home
- Living at home, but “essentially independent”
- Education (graduated from high school)
- Member of armed services
- Physician’s certification
Iowa Law – Minor Consent / Confidentiality

- Substance abuse (125.33)
  - Minor may give legal consent for voluntary treatment of drug and alcohol abuse, and shall not be reported or disclosed to legal guardian w/o minor's consent
  - Only the subject may consent to the disclosure of substance abuse information, regardless of the subject's age or condition
Iowa Law – Minor Consent

- STD or Infection - A minor shall have the legal capacity to act and give consent to provision of medical care or services for the prevention, diagnosis, or treatment of a STD or infection (139A.35)
A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other STDs directly. . . . The minor shall give written consent to these procedures and to receive the services, screening, or treatment. (141A.7)
Iowa HIV Testing

- HOWEVER, minor shall be informed prior to HIV testing that if positive, legal guardian is required to be informed by testing facility.
- Must make assistance available to minors, emphasizing need for family support in dealing with test results (141A.73)
A physician, PA, or ARNP who diagnoses a sexually transmitted chlamydia or gonorrhea infection may prescribe, dispense, furnish prescription oral antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner/s (139A.41)
Legend

- supports the use of EPT
- negatively affects the use of EPT
- EPT is permissible
- EPT is potentially allowable
- EPT is prohibited

Exception: EPT is permissible in Baltimore, Maryland.
Mental health (section 229.2)

- Any person may apply for voluntary admission to a public or private hospital for observation, dx and tx for mental illness
- Nothing stated re: outpatient treatment
Iowa – Minor Consent

- Minor who has been subject to unlawful sexual conduct or forcible felony may be provided immediate and short term medical or mental health services without prior written consent of parents or guardian (915.35)

- Professional shall notify victim of requirement to report abuse (915.35)
Lascivious conduct with minor – serious misdemeanor

- It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them. (709.14)
Sexual Abuse - 3rd Degree
(Class “C” Felony)

- Act is done by force / against will
- The other person is 12 or 13 yrs
- The other person is 14 or 15 yrs AND
  - Related by blood or affinity to 4th degree
  - Member of same household
  - Position of authority over the other
  - Perpetrator is 4 years or more older than the other (709.4)
Sex Abuse in 3rd Degree

- Act performed while other is under the influence of a controlled substance which prevents the other from consenting and person performing act knows that other person under the influence

- Act performed while other is mentally or physically incapacitated
Sexual Abuse in 2nd Degree
(Class “B” Felony)

- Person displays dangerous weapon or threatens force creating substantial risk of serious injury

- When the other person is under the age of 12 (709.3)
Iowa Abortion Law- 1996 (135L.3)

- >48 hr prior notification to a parent of minor

- If pregnant minor objects, may petition court to authorize waiver of notification
Iowa Abortion Notification
Waived

- Pregnant minor declares she is victim of child abuse and abuse has been reported or parent is named in report of founded child abuse.
Pregnant minor declares that she is a victim of sexual abuse and has reported the sexual abuse to law enforcement.
Confidentiality

- Not absolute
- “I will not lie to you, I will not lie to your parents”
Confidentiality

- Important to establish policy with parents before need arises - context of both parties working together to protect adolescent from unhealthy behaviors
Confidentiality

- Parental involvement is (almost) always preferred

- Many adolescents want parents involved, but don’t know how to tell - fear of being devalued, retribution
Confidentiality

- Secrets difficult to keep from parents
- Discuss openly now rather than sudden blowup later
- Some situations need parental involvement - continuing pregnancy, substance or mental health treatment
Breaking Confidentiality

- When “duty to warn” exists
  - Required by state law - abuse
  - Serious threat to self
  - Serious threat to others
Breaking Confidentiality

- Tell adolescent when need to break confidentiality and why

- Allow adolescent to help define how and to whom disclosure will occur

- Anticipate and explore likely parental reactions and how deal with those
Minors shall be granted access to their own records upon request (441-9.15(17A,22))

Substance abuse information. Only the subject may consent to the disclosure of substance abuse information, regardless of the subject's age or condition.
Record Privacy

- No guarantee that records not revealed to parents of minor inadvertently (another reason for encouraging open discussion)
Confrontation with angry parents

- Anger from parent’s realization of loss of control - identity crisis, feelings of failure
- Seek to regain parental authority
Confrontation with angry parents

- Professional needs to empathize with parents

- Ultimate goal is communication and support for adolescent
Payment

- Parent’s Insurance
  - EOBs routinely sent to policyholder
    - Increase transparency to patient
    - Reduce insurance fraud and medical ID theft
    - Includes description of care, provider, $ covered & not covered
  - Policyholder liable for co-pays & $ not covered by insurance
  - In Iowa, explanation of denial is required
Payment

- Legally, if minor consents, is liable for costs, except emergency care

- Options
  - Arrange reduced payments with teen
  - Refer to free facilities – increased burden on programs, may have less $ due to ACA
References


www.cahl.org (The Center for Adolescent Health & the Law)

www.youthlaw.org (National Center for Youth Law)
References

www.guttmacher.org (Guttmacher Institute to advance sexual and reproductive health and rights)

www.advocatesforyouth.org (Advocates for Youth to help youth make informed and responsible decisions about reproductive and sexual health)

www.cdc.gov (Center for Disease Control & Prevention)