

Policy Statements About Confidentiality in Particular Health Care Settings

Schools and School Health Centers

American Academy of Child & Adolescent Psychiatry

- [T]he Academy recommends that in communities where the need for such services is indicated, school systems should collaborate with local health agencies to establish health care clinics which would provide a full range of services including counseling and information regarding reproductive health. Where health services are provided to adolescents, these services should maintain the traditional practices regarding patient confidentiality. ²

American Academy of Pediatrics

- Adolescents, for a variety of reasons (e.g., emancipation, independence, desire for confidentiality), often will not seek out or take advantage of services in traditional settings. [...] Expanded school health services carry inherent and unique issues of patient confidentiality, consent, compliance, and continuity that need different solutions than they would in traditional health care settings and in schools without expanded health services. [...] Parents should be encouraged to be primarily and intimately involved in the health education and health supervision of their children. Issues of medical liability and confidentiality should be identified and addressed during a registration process. Typically, a standard parent permission form is prepared as a component of registration for the school-based clinic so that students may receive services. At the very least, this should include permission for the school health center to exchange information with the primary care provider and with the school's traditional health staff (e.g., school nurse, school counselor) for matters that pertain to a child's well-being at school. If the school's plan includes provisions for adolescents to receive services without parent notification or health plan billing, this too must be addressed at the time of registration. ²⁷

American Academy of Pediatrics

- School policies and practices for medication administration must ensure that student confidentiality is protected, as outlined in the Family Education Rights and Privacy Act and the Health Insurance Portability and Accountability Act. ²¹

American Academy of Pediatrics

- [Regarding school health assessments] Each child should be examined individually (rather than in groups) to ensure adequate attention to individual problems and concerns and to protect confidentiality and the child's sense of modesty. Parents should consent to the school health evaluation and be present, particularly in the primary grades. ²⁶

American Medical Association

- Before patient services begin, policies on confidentiality should be established with the advice of expert legal advisors and the school health council. ⁶⁰

Statement of the National Task Force on Confidential Student Health Information, a project of and endorsed by the **American School Health Association**

- The National Task Force [on Confidential Student Health Information] recommends that all school personnel regard as confidential all information related to a specific student's physical, mental, and developmental health status, whether that information is written, oral, or in electronic form. This information is subject to the protections required by federal and state law and the local school district's confidentiality policies and practices. School districts have a responsibility to ensure that a specific student's health information is maintained, stored, retrieved, and transferred in ways that protect students' and their family's privacy. This responsibility includes adopting specific policies, developing clear administrative procedures that protect confidential

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student health information, identifying sanctions and penalties when rules are violated, and providing staff training that addresses uniform implementation of the policies and procedures.

Clear policies and procedures help school health professionals balance the need to protect confidentiality with the need to provide relevant information to other school personnel in order to provide students with appropriate educational programs and a safe environment. [...]

Recommended guidelines for protecting confidential student health information: [1] Distinguish student health information from other types of school records; [2] Extend to school health records the same protections granted medical records by federal and state law; [3] Establish uniform standards for collecting and recording student health information; [4] Establish district policies and standard procedures for protecting confidentiality during the creation, storage, transfer, and destruction of student health records; [5] Require written, informed consent from the parent and, when appropriate, the student, to release medical and psychiatric diagnoses to other school personnel; [6] Limit the disclosure of confidential health information within the school to information necessary to benefit students' health or education; [7] Establish policies and standard procedures for requesting needed health information from outside sources and for releasing confidential health information, with parental consent, to outside agencies and individuals; and [8] Provide regular, periodic training for all new school staff, contracted service providers, substitute teachers, and school volunteers concerning the district's policies and procedures for protecting confidentiality.⁷⁶

- ❑ [School based health services should]: Encourag[e] the student's active, age appropriate participation in decisions regarding health care and prevention activities. Involv[e] the parents or other adult caregivers as supportive participants in the student's health care whenever appropriate and possible. Ensur[e] the confidentiality of information, whether transmitted through conversation, billing activity, telemedicine, or release of medical records. Provid[e] services and materials that are culturally sensitive and respectful of family values and diversity.⁷⁸
- ❑ Collaboration between health care providers in [school based health centers] SBHCs and school nurses enhances students' health, academic outcomes, life-long achievement, and over-all student and staff well-being. In support of successful school nurse-school-based health center partnerships, it is our shared vision that collaboration should be characterized by: inclusion of student, family, and school staff within the parameters of confidentiality; [...] joint policies and procedures that ensure the quality and confidentiality of care received by students; [and] information sharing and exchange that protects student privacy and ensures continuity and coordination of care.⁸⁰
- ❑ School-based health centers [should] have a policy on parental consent.⁷⁷

Statement of the National Task Force on Confidential Student Health Information, a project of and endorsed by the **American School Health Association** (cont'd)

National Assembly on School-Based Health Care

National Assembly on School-Based Health Care

National Assembly on School-Based Health Care

*Schools and School Health Centers***National Association of School Psychologists**

- School psychologists respect the confidentiality of information obtained during their professional work. Information is revealed only with the informed consent of the child, or the child's parent or legal guardian, except in those situations in which failure to release information would result in clear danger to the child or others. Obsolete confidential information will be shredded or otherwise destroyed before placement in recycling bins or trash receptacles.

School psychologists discuss confidential information only for professional purposes and only with persons who have a legitimate need to know. School psychologists inform children and other clients of the limits of confidentiality at the outset of establishing a professional relationship. [...]

School psychologists recognize the importance of parental support and seek to obtain that support by assuring that there is direct parent contact prior to seeing the child on an on-going basis. (Emergencies and "drop-in" self-referrals will require parental notification as soon as possible. The age and circumstances under which children may seek services without parental consent varies greatly; [school psychologists should] be certain to [...] "adhere to federal, state, and local laws and ordinances governing their practice and advocacy efforts. If regulations conflict with ethical guidelines, school psychologists seek to resolve such conflict through positive, respected, and legal channels, including advocacy efforts involving public policy.") School psychologists secure continuing parental involvement by a frank and prompt reporting to the parent of findings and progress that conforms to the limits of previously determined confidentiality.

School psychologists encourage and promote parental participation in designing services provided to their children. When appropriate, this includes linking interventions between the school and the home, tailoring parental involvement to the skills of the family, and helping parents gain the skills needed to help their children. School psychologists respect the wishes of parents who object to school psychological services and attempt to guide parents to alternative community resources. [...]

School psychologists discuss the rights of parents and children regarding creation, modification, storage, and disposal of confidential materials that will result from the provision of school psychological services. [...]

School psychologists ascertain that information about children and other clients reaches only authorized persons. [...] School psychologists assist agency recipients to establish procedures to properly safeguard confidential material. [...]

School psychologists comply with all laws, regulations and policies pertaining to the adequate storage and disposal of records to maintain appropriate confidentiality of information. [...] School psychologists maintain full responsibility for any technological services used. All ethical and legal principles regarding confidentiality, privacy, and responsibility for decisions apply to the school psychologist and cannot be transferred to equipment, software companies, or data processing departments. [...] To ensure confidentiality, student/client records are not transmitted electronically without a guarantee of privacy. In line with this principle, a receiving FAX machine must be in a secure location and operated by employees cleared to

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work with confidential files, and e-mail messages must be encrypted or else stripped of all information that identifies the student/client.⁸⁴

- Social workers in schools must [...] recognize that although the student is the identified client, the parents of a student younger than age 18 have certain rights, unless the student is an emancipated minor. This presents social workers in schools with a dual client situation, which can be especially complex if the student is pregnant and chooses not to inform her parents. Social workers must be familiar with federal and state laws as well as the local education agency's policies and procedures for reporting child abuse and neglect and laws of confidentiality regarding HIV/AIDS and drugs and alcohol. School social workers are bound by a duty to warn if there is a danger to the student or another individual.⁸⁷

National Association of School Psychologists (cont'd)

National Association of Social Workers

College Health Service

- Students have a right to considerate and compassionate care that safeguards their personal dignity and respects their values and preferences. A college health program recognizes the basic human rights of patients and encourages patients to assume responsibility for their own welfare. Such a health service includes the following characteristics: [...] Students are provided appropriate privacy, including protection from access to their confidential information by faculty and non-health service staff who are not responsible for direct health care, and by other students working at the health service not trained or qualified to provide care; [...] The need to assure continuity of care and to protect a patient's health and safety is balanced with a patient's rights to privacy and the confidentiality of provider-patient disclosures, as appropriate. Student disclosures and records are treated confidentially. Students are given the authority to approve or refuse their release in compliance with applicable state and federal laws; [...] Information is available to students and staff concerning the following: policy on the rights and responsibilities of patients; [...] [and] policy on treatment of an unemancipated minor not accompanied by an adult, consistent with applicable federal and state regulations. [...]

American College Health Association

A college health program maintains a health record system from which information can be retrieved promptly, with appropriate safeguards of confidential patient information. [...] Such a college health program has the following characteristics: The college health program develops and maintains an effective system for the collection, processing, maintenance, storage, retrieval, distribution, and safeguarding of patient health records.³⁷

Emergency Departments

- Common and statutory law generally has supported the physician or health care professional in providing emergency care for children in the ED without the consent of a parent or guardian. In addition, current federal law under the Emergency Medical Treatment and Active Labor Act (EMTALA) mandates a medical screening examination (MSE) for every patient seeking treatment in an ED of any hospital that participates in programs that receive federal funding, regardless of consent or reimbursement issues. EMTALA preempts

American Academy of Pediatrics, American College of Emergency Physicians, and five other organizations

Emergency Departments

American Academy of Pediatrics, American College of Emergency Physicians, and five other organizations (cont'd)

conflicting or inconsistent state laws, essentially rendering the problem of obtaining consent for the emergency treatment of minors a nonissue at participating hospitals. [...]

Although the ED should attempt to contact the unaccompanied patient's parent or legal guardian to seek consent for treatment, the performance of the MSE and the stabilization of the patient with an identified [emergency medical condition] EMC must not be delayed. [...] In his comprehensive reference on EMTALA, Bitterman stated,

“Thus, under federal law, a minor can be examined, treated, stabilized, and even transferred to another hospital for emergency care without consent ever being obtained from the parent or legal guardian. Such care would not only be in the patient's best interest but also required by federal law.” [...]

Although medical care for an emergency condition may need to proceed without prior assent or permission, the physician should seek consensus from the patient or family as soon as possible. If a conflict over consent or assent for treatment develops, to resolve the conflict the physician may need to evaluate the patient's emotional and intellectual maturity and understanding, the severity of the medical condition, the risks and benefits of treatment, the potential to defer therapy, and the basis for the refusal of treatment. In some cases the physician may need to involve the court or social service agencies to proceed with treatment against patient or parental will.

Financial reimbursement for the ED treatment of the unaccompanied minor may affect access to appropriate medical care and patient confidentiality. Adolescents usually are covered by their family's insurance or by Medicaid, but they may not have coverage for unaccompanied care, and they may not have the resources to pay for care themselves. As mentioned previously, EMTALA requires that an MSE be provided without consideration of reimbursement issues. Although state and federal programs exist to pay for children's health care needs, uncompensated charges may result from the EMTALA requirement of treatment for all without regard to payment. The ED should ensure that the financial issues surrounding a patient's treatment do not result in a breach of patient confidentiality, particularly if an unintended parental notification may result from the receipt of an itemized medical bill. The physician should discuss these ramifications of unaccompanied care with the minor patient as appropriate for the patient's level of maturity and understanding and seek assent from the patient for parental involvement, as may be required by patient privacy laws in some states, or honor the patient's wish for confidential care. [...]

Recommendations: 1. Appropriate medical care for the pediatric patient with an urgent or emergent condition should never be withheld or delayed because of problems with obtaining consent. 2. The physician or health care professional should be familiar with EMTALA federal regulations and state laws concerning consent for the treatment of minors. 3. Every clinic, office practice, and ED should develop written policies and guidelines that conform with federal and state laws regarding consent for the treatment of minors, including specific guidelines on financial billing, parental notification, and patient confidentiality for the unaccompanied minor. 4. The physician or health care professional should document in the patient medical record all

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discussions of consent or assent, including the identity of the person providing consent or permission for treatment (the patient or parent or another adult acting on the parent's behalf), an assessment of the maturity and understanding of the pediatric patient, and the efforts made to obtain consent from the patient's legal guardian, if unavailable. 5. The physician or health care professional should always seek consent or assent for medical care from the pediatric patient as appropriate for the patient's development, age, and understanding.¹⁶

- The medical screening, evaluation and necessary treatment of a minor in the emergency department should not be delayed because of consent issues.³⁹

- [Regarding consent for evaluation and treatment of minors] There is no question that an evaluation by a health care provider must be done to determine if an emergency exists, and, if so, no consent is needed for initiating treatment. [...] States vary in consent statutes and case law. Each state has its own variations and exceptions. [...] Emergency physicians must be knowledgeable about their state consent laws and their departmental consent policy and have a mechanism to obtain consent from the court when necessary for the health and welfare of the child. [...] In an attempt to address the conflict between the rights and responsibilities of parent(s) or legal guardian(s) (henceforth referred to as "parent[s]") and the entitlement of minors to timely and confidential medical care, the legal guidelines regarding consent have grown complex. In the emergency department, misinterpretation of these guidelines can delay the delivery of medical care unnecessarily. Emergency physicians need to deliver the best care possible in a prompt and appropriate manner without undue restrictions imposed by the attainment of consent. [...] With a minor, an effort should be made to obtain consent from the parent(s), but not pursued to the point of detrimental delay in treatment. If treatment is given without prior consent from the parent(s), the parent(s) should be advised of the treatment rendered as soon as possible. [...] Consent issues involving minors and parent(s) are problematic. The laws strive to balance the interests of the minor, family, health care system, and public. The judicial system has no intent to deny or delay care to minors. The courts have not found physicians liable where appropriate, beneficial, and necessary medical care was given without consent. Emergency physicians' actions should be guided by common sense to provide the best care possible at all times. Emergency physicians should never allow the need for consent to deter them from delivering necessary care. It is crucial that documentation on the medical record sheet indicates the assessment of the need for consent, and, if indicated, determination of the competence of the party(ies) approached for consent, measures taken to obtain an informed consent, and identification of and resolution of conflict(s).⁴⁰

American Academy of Pediatrics, American College of Emergency Physicians, and five other organizations (cont'd)

American College of Emergency Physicians

American College of Emergency Physicians

*Managed Care Settings***Society for Adolescent
Medicine**

- Due to their age and developmental status, many adolescents will only use necessary health care if they can obtain services in adolescent-friendly sites on a confidential basis. Therefore, managed care arrangements should incorporate protections for adolescents to receive confidential care and procedures allowing adolescents to give informed consent for their own care as allowed by state and federal law. [...] Co-payments, if required at all, should be minimal; co-payments should not be imposed for services such as family planning, screening for sexually transmitted infections, or substance abuse counseling and treatment that are related to adolescents' high risk behaviors and that adolescents are reluctant to seek other than on a confidential basis.⁹⁴

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