

# Privacy Challenges to Consider for Pediatric Patient Populations

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Just as a child's body differs from an adult's body both physically and physiologically, privacy practices and challenges in a pediatric facility differ from those in an adult facility. As the minor approaches the age of majority, confidentiality and privacy rights of the minor must be balanced with legal requirements and the remaining rights of the parent or guardian. Policies, procedures, and practices should be designed with this fluidity in mind.

To mitigate the risk of inappropriate disclosures and to gain the trust of the minor patient, clinical staff should be aware of privacy principles and concepts that guide the confidential care of minors.

Pediatric healthcare providers often find themselves working with unique challenges that reflect the needs of minors. By definition, pediatrics generally refers to minors as being under 18 years of age. However, even that definition can prove difficult if the minor is considered emancipated. The HIPAA Privacy Rule gives presumptive control of a minor's protected health information (PHI) to the parents or guardians. This presumptive right is forfeited if state law does not require parental consent for the minor's treatment.

## Consent for Release of Information

A competent minor may consent for release of information. In the absence of state law, the age limits that apply to consent for treatment can be applied to release of information to determine whether the minor is competent to give valid authorization.

In circumstances where the minor alone consented to treatment, consent for the release or access to records should generally be obtained from the minor alone. If a minor, in conjunction with a parent/guardian, signed the consent then the release authorization should be signed by both parties.

An unemancipated minor may consent to examination and treatment for sexually transmitted infection, drug use and abuse, and sexual assault without the consent of a parent/guardian. A minor 15 years of age or older may consent for mental health treatment without parental consent. Similarly, contraceptive information, procedures, and supplies may be provided to a minor without parental consent. However, permanent sterilization procedures cannot be obtained without parental consent. For example, in Colorado a 12-year-old girl can consent to gynecologic treatment, be prescribed contraception, and take control of her health records for that visit, all without her parents' knowledge or consent.

In cases where an unemancipated minor is treated without parental consent, the provider should be aware of state, federal, or common laws that provide guidance for confidential care to minors.

## Examining Custody Issues

Presumptive custody of a minor is given to the biological parent(s). Custody issues are magnified in cases of divorce, social services involvement, foster parenting, and adoption, and additionally challenged with the involvement of grandparents, step-parents, and extended family. Involvement of these additional people in the care and treatment of the minor increases the risk of inappropriate disclosure.

In cases of divorce, the parent with decision-making responsibility should give consent. In the absence of a custodial parent, if a step-parent has not legally adopted the minor, the step-parent cannot lawfully consent for treatment. A custodial parent, however, may give power of attorney to the step-parent, authorizing him or her to consent for treatment. By the same token,

authority to consent to treatment of a minor can be awarded to a proxy (grandparent, neighbor, clergy, etc.) in anticipation of a parent or guardian being unavailable for consent. This authority also allows a provider to share medical information from the current visit with the proxy.

Suspected child abuse must be reported to the county department of human services. The minor's parent/guardian generally will have access to this reporting, unless the provider is concerned about such information being given to the parent or guardian or determines that it is not in the best interest of the minor to treat the parent or guardian as the child's personal representative, especially in cases where the custodial parent is the suspected perpetrator. In cases where state law or HIPAA is unclear, attempts should be made to balance the right of access provision with the child's privacy.

## Patient Portals and Minors

The benefits of patient portals are well established and include the ability to communicate with the patient's medical provider, schedule appointments, and request and receive health records online. Pediatric facilities should create proxy access rules that comply with HIPAA and state laws for parents and legal guardians to gain access to the portal. One way to accomplish this is to have different levels of access and exceptions for the patient portal.

For example, if a patient is:

- Under 14 years old, patient/parents/guardians will have full access to all aspects of the patient's portal, including appointments, test results, medication refills, and more
- Between 14 and 18 years old, parents and guardians will have the ability to message the patient's provider(s), but only have limited access to the medical record. The patient will have full portal access.
- 18 years old or older, parents/guardians will have proxy access only as authorized by the patient. The patient will have full portal access.
- Exceptions should be made for patients who are over 14 years old, with special needs, or of limited capacity, and unable to manage their own healthcare. In this case, special allowance should be made allowing parents/guardians to maintain full proxy access to all aspects of the patient's portal.

## References

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