



Equipping SBHC Advocates to Address Legal Challenges in the Provision of Reproductive Health Care & Confidential Services for Adolescents

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Overview

- Legal framework for sexual health services to adolescents
- Issues specific to SBHCs
- Effective advocacy approaches

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Legal Framework

- Legal framework for adolescent sexual & reproductive health care
 - Consent & confidentiality
 - State & federal Laws
 - Professional recommendations
 - Research on importance of confidentiality

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First Principles

- Comprehensive services
- Minors & adults
- Positive family involvement
- Lack of supportive families
- Laws & adolescent access to care

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Parents and Adolescents

- Voluntary communication
 - Supportive parents
 - Adolescent disclosure
- Mandated communication
 - Dysfunctional families
 - Adolescent autonomy
- Interests of adolescents & parents

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The Legal Framework

- Complex patchwork
- State & federal law
- Constitution, statutes, court decisions
- Reproductive rights
- Family roles
 - Status of minor children
 - Rights & responsibilities of parents

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Consent for Minors' Health Care

- Basic rule = parental consent required
- Alternatives to parental consent
 - Related caretakers
 - Foster parents
 - Court
 - Social worker or probation officer
- Minor consent

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History of Minor Consent Laws

- Earliest laws enacted in 1950s
- Consistent pattern of expansion through 1960s & 1970s
- Few changes in 1980s
- Attempts to repeal or restrict laws beginning mid-to-late 1990s

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Consent Laws in 50 States & DC

- All states have minor consent laws
- Some laws based on minor's status
- Some laws based on services minor is seeking
- A few laws allow treatment without consent

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Consent Laws Based on Status

- Emancipated minor
- Married minor
- Minor in the armed services
- Mature minor
- Minor living apart from parents
- High school graduate
- Minor over a certain age
- Pregnant minor
- Incarcerated minor

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Consent Laws Based on Services (1)

- “Pregnancy related care”
- Minors usually may consent
 - Contraceptive services
 - Prenatal & maternity care
- Minors often may not consent
 - Sterilization
 - Abortion

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Consent Laws Based on Services (2)

- STD/VD prevention, diagnosis, & treatment
- Reportable disease prevention, diagnosis, & treatment
- HIV/AIDS testing & treatment
- Drug or alcohol counseling & treatment
- Outpatient mental health services
- Diagnosis & treatment for sexual assault

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Relationship of Consent & Confidentiality

- State & federal laws
- “Consent & confidentiality”
- Confidentiality in consent laws
- Confidentiality & disclosure
 - Minor consent laws
 - Other laws

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Rationale for Confidentiality Protection

- Avoid negative health outcomes
 - Protect health of adolescents
 - Protect public health
- Research findings on implications of adolescents’ privacy concerns

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Summary of Research (1)

- Many adolescents have privacy concerns
- Adolescents are primarily concerned about disclosure of information related to sexual behaviors, substance use, and mental health to their parents

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Summary of Research (2)

- Privacy concerns can be important enough to influence:
 - Whether adolescents seek care
 - When adolescents seek care
 - Where adolescents seek care
 - If adolescents talk openly with physicians

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Summary of Research (3)

- In general....
 - girls more concerned about parental notification than boys
 - white adolescents more concerned about parental notification than minority adolescents
 - consistently little or no association between SES or insurance status and privacy concerns

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Summary of Research (4)

- Privacy concerns likely influence reproductive health outcomes and rates of sexually transmitted infections
- Health outcomes are costly

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State Confidentiality Laws

- State constitutional right of privacy
- Minor consent
- Medical confidentiality & medical records
- Patient access to health records
- Professional licensing
- Evidentiary privileges
- State funding programs

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Federal Confidentiality Laws

- Federal constitutional right of privacy
- Federal funding programs
 - Title X
 - Medicaid
- Regulations for federal drug & alcohol programs
- HIPAA Privacy Rule
- Importance of state laws in application of federal laws

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HIPAA Privacy Rule – Minors as Individuals (1)

- Minors are treated as “individuals” under HIPAA Privacy Rule in 3 circumstances:
 - When the minor has the right to consent and has consented; or
 - When the minor may obtain care without parental consent and the minor, a court, or someone else has consented; or
 - When parents accede to confidentiality agreement between minor and health care provider

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HIPAA Privacy Rule – Minors as Individuals (2)

- Minor acting as “the individual” can exercise rights re “protected health information”
- Right of the individual
 - Access to information
 - Control over disclosure
 - Request privacy protection

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HIPAA Privacy Rule - Disclosure to Parents

- If state or other law requires it, provider must disclose
- If state or other law prohibits it, provider may not disclose
- If state or other law permits it, provider has discretion to disclose
- If state or other law is silent or unclear, provider has discretion to grant or withhold access

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Confidentiality Provisions in State Minor Consent Laws

- Explicit protection of confidentiality in minor consent laws
- Reference to minor consent laws in other statutes
- Grant of discretion to physician or health care professional to disclose information

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Laws Mandating Disclosure

- Parental notification/consent provisions
- Child abuse reporting statutes
- Disclosure requirements when minor is dangerous to self or others

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Professional Organization Policies - Themes

- Rationale for supporting confidentiality
- Informing adolescents and parents about confidentiality protections and limits to those rights
- Policies supporting confidential access to specific health services, such as:
 - Preventive health
 - Testing & treatment for STDs & HIV
 - Contraception, pregnancy-related services, abortion, & other reproductive health services
- Concerns for specific populations of adolescents
- Confidentiality in particular health care settings

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Issues Specific to SBHCs

- SBHC/school district relationship
- SBHC consent policies/state laws
- SBHC confidentiality policies/information sharing
- SBHC funding/Title X

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Delivering Sexual & Reproductive Health Services

- Which services?
 - Contraceptive counseling
 - STD testing, diagnosis, & treatment
 - Pregnancy testing & prenatal care
- Counsel? Refer? Prescribe? Dispense?

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Consent for services

- General consent for use of health center
- Opt-in/opt-out for specific services
- Reliance on state minor consent laws

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Birth Control & Confidentiality Controversies

- Portland, Maine
 - Middle school SBHC
 - Prescription birth control for sexually active students
 - Consent form
 - Child abuse reporting
- Other states and communities?

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What Are the Best Messages?

- Sexual & reproductive health needs
- Communication with parents
- Rationale for minor consent laws
- Rationale for confidentiality protections

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What Are the Best Advocacy Strategies?

- Messages
- Audiences
- Forums
- Allies

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Conclusion

- Adolescents need sexual & reproductive health services
- Parents are important
- Confidentiality is also important
- Advocacy is needed to facilitate SBHCs ability to deliver sexual & reproductive health services

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