Confidentiality & the Adolescent Client

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OVERVIEW
Why have confidentiality?

- Avoid negative health outcomes
  - Protect individual adolescents’ health
  - Protect the public health

- Encourage adolescents to seek needed care

- Research findings show that concerns about privacy influence:
  - Whether adolescents seek care
  - When and where they seek care
  - How open they are with health care provider
## Confidentiality laws

**Federal**
- HIPAA
- Others specific to particular settings or clients:
  - Title X
  - Substance abuse (applies to federally assisted substance abuse programs, not to all substance abuse info in medical records)
- FERPA

**State**
- Confidentiality for minor’s consent services (G.S. 90-21.4)
- Other laws specific to particular conditions or treatments:
  - Communicable disease
  - Mental health
Protected health information (PHI)

- Information that identifies an individual and relates to
  - Health status or condition, or
  - Provision of health care, or
  - Payment for the provision of health care

Individual

- A person who is the subject of PHI

Personal representative

- A person with legal authority to act on behalf of an individual in making decisions related to health care
Who can give permission for disclosure of PHI?

- General rule: Individual
- But if individual can’t make own health care decisions, then personal representative

- How does this apply to minors?
<table>
<thead>
<tr>
<th>Minor is treated as “individual” if:</th>
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</thead>
<tbody>
<tr>
<td>Minor consents to health care service and no other consent is required by law</td>
<td>Ex: Minor’s consent law (G.S. 90-21.5)</td>
</tr>
<tr>
<td>Minor may lawfully obtain care without parental consent and the minor, a court, or another person gives the consent</td>
<td>Ex: NC law allows certain adults other than parents to consent to minor’s abortion, or court may waive parental consent</td>
</tr>
<tr>
<td>Minor’s parent agrees to confidentiality between minor and HCP for a health care service</td>
<td>Ex: Pediatrician may ask a parent for permission to examine and/or consult with an adolescent privately</td>
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</table>
What does it mean for the minor to be treated as the “individual”?

- Minor is the person who exercises HIPAA rights regarding information about the health care service, including:
  - Giving permission for disclosure when permission is required
  - Exercising right of access to the information
When a minor is treated as the individual, may information be disclosed to the minor’s parents?

HIPAA defers to state or “other applicable” law

- State/other law requires disclosure
  - HCP must disclose

- State/other law prohibits disclosure
  - HCP may not disclose

- State/other law permits disclosure
  - HCP has discretion

- State/other law is silent on issue
  - HCP has discretion
What do NC & other laws say about disclosing minor’s consent information to parents?

<table>
<thead>
<tr>
<th>NC law (G.S. 90-21.4(b))</th>
<th>Other laws</th>
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</thead>
<tbody>
<tr>
<td>▪ General rule: No disclosure to parent without minor’s permission</td>
<td>▪ May prohibit or inhibit disclosure to parents about minor’s consent services for:</td>
</tr>
<tr>
<td>▪ Exception: HCP may disclose to parent if:</td>
<td>– Family planning (Title X, Medicaid)</td>
</tr>
<tr>
<td>– Essential to life or health of the minor, or</td>
<td>– Communicable diseases (G.S. 130A-43)</td>
</tr>
<tr>
<td>– Parent contacts HCP and inquires about the treatment*</td>
<td>– Mental health (G.S. Ch. 122C)</td>
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<tr>
<td></td>
<td>– Substance abuse (42 CFR Part 2)</td>
</tr>
</tbody>
</table>
Bottom lines?

General Rule

- Need **the minor’s permission** to disclose information about treatment received under minor’s consent law to anyone, including parents

Exceptions

- May disclose to parent if essential to minor’s life or health
- May make other disclosures without minor’s permission when disclosure is required by other laws (e.g., to report child abuse or neglect)
MANDATORY REPORTING LAWS
REPORTING TO DSS
If adolescent is a minor (< age 18)

Universal reporting—Any person or institution must report if:

- Cause to suspect that a child under age 18 is abused, neglected, or dependent
- Cause to suspect that a child under age 18 has died as a result of maltreatment

G.S. 7B-301
Scope of DSS authority

- In NC, departments of social services are authorized to respond to reports that allege abuse or neglect by a child’s parent, guardian, custodian, or caretaker.
Parent
- Adoptive or biological

Guardian
- Person appointed by court to care for the child

Custodian
- Person or agency with legal custody of the child

Caretaker
- Someone other than a parent, guardian, or custodian who is responsible for a child in a residential setting
Caretaker (G.S. 7B-101(3))

- Stepparent
- Foster parent
- Adult member of the child’s household
- Adult relative entrusted with child’s care
- Potential adoptive parent during visit or trial placement
- People who supervise children in residential facilities or schools
Abuse: The parent, guardian, custodian or caretaker –

- inflicts, allows, or creates substantial risk of serious, non-accidental physical injury, or
- uses cruel or grossly inappropriate procedure or device to modify child’s behavior, or
- commits or allows various sexual offenses against, with, or by the child, or
- creates or allows serious emotional damage to child, or
- encourages, approves, or directs certain delinquent acts of moral turpitude by the child, or
- commits, allows to be committed human trafficking, involuntary servitude, sexual servitude

Neglect: The child –

- does not receive proper care, supervision or discipline from parent, guardian, custodian or caretaker, or
- is not provided necessary medical or remedial care, or
- has been abandoned, or
- lives in injurious environment, or
- is placed for care / adoption in violation of law

Dependency: The child needs assistance or placement because –

- the child has no parent, guardian, or custodian responsible for his/her care, or
- the parent is not able to provide for child’s care and supervision, and lacks an appropriate alternative child care arrangement.
More on “cause to suspect”

- Duty to report triggered by facts that cause person to suspect abuse or neglect or dependency
- Not HCP’s role or duty to investigate facts and produce evidence
- Cause to suspect must be reasonable; report must be in good faith
  - What has the adolescent told you about his or her circumstances?
  - What else have you observed?
  - What other information is available and what does it mean in light of your professional experience?
Making a report to CPS

- Name, address, and age of the child
- Name and address of the child’s parent, guardian, or caretaker
- Names and ages of other children under age 18 in the same home
- Present whereabouts of the child if not at the home address
- Nature and extent of any injury or condition resulting from the abuse, neglect, or dependency
- Any other information the reporter believes may be useful in establishing the need for protective services or court intervention
What if adolescent is legal adult (≥ 18)?

**Child protective services?**
No – CPS is limited to children under the age of 18

**Adult protective services?**
Report required if:
- Adolescent is a disabled adult
- And is in need of protective services
Definitions

**Disabled adult** –
- Age 18+ or lawfully emancipated minor
- Physically or mentally incapacitated due to certain physical or mental conditions, developmental disabilities, or substance abuse

**In need of protective services** –
- Unable to perform or obtain essential services due to physical or mental incapacity
REPORTING TO LAW ENFORCEMENT
Types of reports

- **Children < age 16**
  - Disappeared and in danger

- **Children < age 18**
  - Recurrent illness or serious physical injury caused by non-accidental trauma

- **All ages**
  - Wounds, injuries, and illnesses caused by criminal acts
Required: Disappeared and in danger – Caylee’s Law (GS 14-318.5)

What “disappearance” means

- The parent or other person providing supervision of a child does not know the location of the child and has not had contact with the child for a 24-hour period.

Legal duty to report

- Disappearance of a child < 16 years old must be reported to law enforcement.
- Parent/other person responsible for care must report within 24 hours.
- Any other person who reasonably suspects that a child has disappeared and is in danger must report within a reasonable time.
Required: Certain injuries & illnesses caused by criminal acts or nonaccidental trauma (GS 90-21.20)

<table>
<thead>
<tr>
<th>All ages, including minors</th>
<th>Children under 18 only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gunshot wounds &amp; other firearm injuries</td>
<td>Recurrent illness caused by nonaccidental trauma</td>
</tr>
<tr>
<td>Illness from poisoning</td>
<td>Serious physical injury caused by nonaccidental trauma</td>
</tr>
<tr>
<td>Wounds/injuries from knives/sharp instruments, if caused by a criminal act</td>
<td></td>
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<tr>
<td>Grave bodily harm or grave illness, if caused by a criminal act of violence</td>
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</table>
Important! Mandatory reports under GS 90-21.20 always require *injury or illness*

- **Criminal act of violence** + **Grave illness or bodily harm** = **Report (any age)**
- **Non-accidental trauma** + **Serious injury or recurrent illness** = **Report if child <18**
Making a report required by GS 90-21.20

- **Who?**
  - Treating physician or administrator of health care facility where treated

- **What?**
  - Person of any age with one of the specified illnesses or injuries: name, age, sex, race, residence or present location, character and extent of injuries
  - Children under age 18 with serious physical injury or recurrent illness caused by nonaccidental trauma: Child’s identity and information about illness/injury
  - *Disclosure of additional information is not authorized by reporting statute.*

  May disclose additional info only if:
  - Client/personal representative gives permission
  - LE has warrant or court order for information
  - Other law authorizes disclosure to LE

- **When?**
  - As soon as practicable before, during, or after treatment

- **How?**
  - Not specified in law
Summary: Mandatory Reports-Minors

Report to DSS:
- Abuse, neglect, or dependency
- Child has died as result of maltreatment

Report to law enforcement:
- Under 16, disappeared and in danger
- Under 18, serious physical injury or recurrent illness due to nonaccidental trauma
- Other injury reportable under GS 90-21.20
Summary: Mandatory Reports-Adults

- Disabled adult in need of protective services
  Report to DSS

- Injury reportable under GS 90-21.20
  Report to law enforcement
Case Study 1: Mona

- Mona is 13 years old and brought in by her mother. The mother says that Mona is wild, sneaks out at night, and drinks. The mother suspects Mona may be pregnant and wants her to have a pregnancy test. When the nurse speaks to Mona privately, Mona says the only person she has ever had sex with is her mother’s boyfriend, who lives with Mona and her mother.
Tonya is 15 years old and comes in for FP services without a parent. She tells the nurse that she lives with both parents and has an older sibling who no longer lives at home. She has been sexually active for about 3 months with a 17-year-old boy who goes to the same high school. She requests a birth control method that is easy to conceal from her parents. She says her parents do not know that she is sexually active and she does not want them to know.
Case Study 3: Starr

- Starr is 16 years old and comes in with her mother for birth control. She shares with the interview RN that her boyfriend is 24 years old. Her mom and dad both know about her being sexually active with this young man and they really like him and have no problem with their relationship.
Case Study 4: Samantha

- Samantha is a 14 year old who marks on her self-history form that she lives in a safe environment with her mom, stepfather, and two younger siblings. She later confirms with the interview nurse that all is well at home. During the physical exam, the nurse practitioner discovers multiple bruises on Samantha’s back, buttocks, and legs. When asked about the bruises, Samantha states that nothing specific has happened but she is clumsy and always bumping into things.
Definition of Trafficking

- Recruiting, harboring, transporting, providing, or otherwise obtaining another person, with the intent that the other person will be held in involuntary servitude or sexual servitude
Type of Trafficking

- **Sex**: 73%
- **Labor**: 14%
- **Sex & Labor**: 4%
- **Unspecified**: 9%
Gender

- Females: 86%
- Males: 14%
AGE

Adults 70%

Minor 30%
Trafficking victim risk factors

- Recent migration or relocation
- Substance use concern
- Runaway/homeless youth
- Mental health concern
- Unstable housing
Top 5 locations for accessing help

- General social services
- Law enforcement
- Supportive friends/family
- Health services
- Child welfare system
Discussion Scenario

- 16-year-old positive for syphilis
- Unable to identify partners
- Nurse learns that he is a runaway who lives with a group of adolescents and young men who are commercial sex workers
Cause to suspect minor is trafficked → Report to DSS
Report to law enforcement?

- DSS is required to report to LE when:
  - It finds evidence that child may have been abused
  - It receives information that a child may have been physically harmed in violation of any criminal statute by any person

- Should HCP report also? Depends:
  - Does the person have an injury or illness that is **required** to be reported? If yes, report.
  - Does HIPAA **allow** the report even if it is not required?
Serious and imminent threat

Prevent or lessen threat

May disclose PHI if good faith belief that the disclosure is necessary to prevent or lessen a *serious and imminent threat* to the health or safety of a person or the public.

Disclosure may be made to any person reasonably able to prevent or lessen threat.
Identifying and advocating for human trafficking victims

To: Ethics Advisory Board
From: Nurse concerned for my patient
Subject: Human trafficking

I am an RN in a small community hospital. Last month, I admitted a young woman who had suffered a head injury resulting from an assault. The patient only spoke Spanish and her male companion insisted on interpreting for her. The young woman had no family present, and her companion offered to consent to her treatment, although he was not related. The companion was overheard telling the patient that she would not have to work again and that he would protect her. This young woman was dehydrated, malnourished, and appeared to be very afraid. I could tell something was wrong with the situation, but I couldn’t put my finger on what it was, and didn’t know what to do.

Establishing trust is difficult but essential. Victims may resist help and have intense fear, shame, and helplessness that may compel them to leave the hospital without treatment. If you suspect human trafficking, keep a staff member with the patient at all times. Assess your patient without the companion present and use a certified medical interpreter. Ask nonthreatening questions such as:

- Where are you from? How did you arrive here? Do you know where you are now?
- Do you have enough food to eat?
- Do you feel safe where you sleep?
- Are you able to freely come and go from your home?
- Are you forced to do things you don’t want to?

Nurses are ethically required to report suspected human trafficking. Provision 1 of the American Nurses Association’s (ANA) Code of Ethics for Nurses with Interpretive Statements (nursingworld.org/code-of-ethics) states that the nurse practices with compassion and respect for the inherent dignity, worth, and unique attributes of every person. Victims of human trafficking are vulnerable people who desperately need compassion, respect, and nursing care. Provision 2 states that the nurse’s primary commitment is to the patient, and Provision 3 states that the nurse promotes, advocates for, and protects the rights, health and safety of the patient. Victims of human trafficking desperately need nurses to advocate for their rights because they are not able to do so themselves. If you suspect human trafficking, call the police.

Additional information about human trafficking is available from the National Human Trafficking Resource Center (888-373-7888) and the International Organization for Migration (iom.int/countries).
Voluntary reports to law enforcement

- Do not ignore signs and symptoms indicating a patient has been trafficked. A nurse is ethically obliged to take some action in response to this situation:
  - Make appropriate referrals to services.
  - Make reports when required by law to do so

- Before making a decision about whether to take the specific action of making a voluntary report to LE:
  - Consult with appropriate others (social workers, legal department) if possible.
  - If not part of a system in which such consultation is possible, recognize that NC BON has not taken the position that voluntary reports to LE are an ethical duty and would not be inclined to take disciplinary action against a nurse for not making a voluntary report.
Discussion scenario

Facts

- 18-year-old with Chlamydia
- Commercial sex worker
- Tells CD nurse she is being coerced into this work and cannot leave without great personal risk
- Not disabled per definitions in Ch. 108A

Questions for discussion

- Report to DSS?
- Is report to LE mandatory?
- Would other HIPAA provision allow a report to LE?
ADOLESCENTS AND ELECTRONIC HEALTH RECORDS
Patient portals

- **Issue:** Who may have access to a minor adolescent’s PHI?

- **Law:**
  - Sometimes parent/guardian has right of access
  - Sometimes minor has right of access and information must be kept confidential from parent
  - Sometimes both have right of access

- **Practice:** Still evolving
Issue: How to restrict disclosures of some PHI, while allowing disclosure of other PHI

Law:
- Any individual has right to request restrictions on any TPO disclosure
- Any individual has right to demand restriction on disclosures to health plans if individual pays for care in full
- Any individual has right to request restrictions on disclosures to friends or family members involved in care
- Minors treated under minor’s consent law have confidentiality protections

Practice: TBD; key players are engaged & working on it
Questions
Contact Information

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