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Legal and Ethical Issues in the Provision of Adolescent Reproductive Health in the United States

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ABSTRACT

In providing comprehensive evidenced-based reproductive health care to adolescents, understanding the legal and ethical issues surrounding informed consent and confidentiality is one of the many challenges faced by care providers. Informed consent is an active process between the patient and health care provider but varying state and federal laws contribute to provider's uncertainty and ambiguity around practice policies and management options. This article describes issues surrounding legal and ethical issues of informed consent and confidentiality for adolescents seeking reproductive health services.

Key Words: Adolescents, reproductive health, ethical issues, United States, Informed Consent

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Legal and Ethical Issues in the Provision of Adolescent Reproductive Health in the United States

by

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Introduction

Adolescent sexuality is one of the most morally charged issues in reproductive health, and health care providers may find themselves unprepared for the legal and ethical dilemmas surrounding sexual and reproductive health issues, such as contraception or abortion. The United States (US) Census Bureau estimates of youth, under the age 18, comprised 24.0 percent of the total US population (US Census Bureau, 2013). This population accounted for approximately 250,000 live births, 50 percent of all newly diagnosed sexually transmitted infections (STI) (CDC, 2011), and an estimated 22% of all new HIV diagnoses among youth, ages 13-24 (CDC, 2015). Over the last decade, there has been a 51% decline in teen pregnancy, a 44% decline in teen births and a 66% decline in teen abortions (HHS, 2016). Although encouraging, adolescent pregnancy and STIs continues to pose a serious public health concern since adolescents have a disproportionately high rate of unintended pregnancy (82%) and STIs (HHS, 2016). While the evidence points to improved use of contraceptives and better contraceptive options as major factors in driving the pregnancy rates down, the politics of teens and sex remain two persistent challenges for health care providers. In order to effectively help adolescents identify and reach their life goals, it is crucial that health care providers offer comprehensive reproductive health services that include prevention strategies. This article seeks to explore the legal and ethical issues that both providers and adolescents face in seeking comprehensive reproductive health care services.

ADOLESCENT CONSENT AND THE LAW

Informed Consent

Although consent has been a long-standing practice in medicine, the informed consent, as both a legal and ethical document, has its beginnings in the later part of the 20th century (Berg, 2001). The underlying values of an informed consent focus on the individual's right to self-determination in defining their own goals and making intentional choices designed to achieve those goals (Grady, 2015). When working with adolescents, the intersection between self-determination and ability of the teen to comprehend information, as it relates to their vulnerability to risks, does not offer a clear path for providers in obtaining informed consent. The ability of minors to legally consent to treatment for sensitive health care issues, such as reproductive health, mental health or substance abuse, is complicated by the incongruence between federal and state law. In 1996, the Health Insurance Portability and Accountability Act (HIPAA) established national standards to protect personal health information and individual medical records; however, for minors under the age of 18, the regulations defer to state statutes for determining parental access to adolescent medical information (HHS, 2015). While consent laws in most states apply to all minors age 12 and older, there are some states that allow certain groups of minors to consent --those who are married, pregnant or already parents. Several states

have no relevant policy on disclosure to parents or guardians and the decision is left to the care provider (Guttmacher, 2017).

According to the Guttmacher Institute (2017), categories of state law that affect a minor's right to consent include:

- *Contraception*: 26 states and the District of Columbia allow all minors (12 and older) to consent to contraceptive services. 20 states allow only certain categories of minors to consent to contraceptive services. 4 states have no relevant policy or case law.
- *STI Services*: All states and the District of Columbia allow all minors to consent to STI services. 18 of these states allow, but do not require, a physician to inform a minor's parents that he or she is seeking or receiving STI services when the doctor deems it in the minor's best interests.
- *Prenatal Care*: 32 states and the District of Columbia explicitly allow all minors to consent to prenatal care. Another state allows a minor to consent to prenatal care during the 1st trimester; requires parental consent for most care during the 2nd and 3rd trimesters. 13 of these states allow, but do not require, a physician to inform parents that their minor daughter is seeking or receiving prenatal care when the doctor deems it in the minor's best interests. 4 additional states allow a minor who can be considered "mature" to consent. 13 states have no relevant policy or case law.
- *Abortion*: 2 states and the District of Columbia explicitly allow all minors to consent to abortion services. 21 states require that at least one parent consent to a minor's abortion, while 12 states require prior notification of at least one parent. 5 states require both notification of and consent from a parent prior to a minor's abortion. 6 additional states have parental involvement laws that are temporarily or permanently enjoined. 5 states have no relevant policy or case law.

Stipulations for mental health or substance abuse services also vary by state.

Confidentiality

A second hurdle faced by adolescents is the right to confidential care. Just as consent laws may vary by state, differing state statutes, surrounding confidentiality, may vary. The principal of confidentiality ensures that an individual's health information not be shared without the person who consented to care giving explicit permission. And, while some minors feel comfortable having their health care information shared with their legal parent or guardian, for others, they would forgo care if confidentiality could not be guaranteed (English & Ford, 2004, Gilbert, Rickert, & Aalsma, 2014). Unintentional barriers, such as provider-patient trust, provider's values and billing or claims processing can inadvertently deny adolescents their right to obtain sensitive reproductive health services (Gilbert, Rickert & Aalsma, 2014, American Academy of Pediatrics, 2016).

As adolescents begin exploring their sexuality, health care providers often serve as a safe-haven for confidential and expert advice so the process for establishing a trusting relationship with both the adolescent and the legal parent/guardian needs to begin at the first health care encounter. This relationship is compromised when insurance companies negotiate provider contracts and the provider falls out of network (American Academy of Pediatrics, 2016). For the adolescent consumer, the tenuous process of establishing trust must begin again. Additionally, seeking

services from a new provider may not afford the adolescent with the same provider protections if practice protocols do not support certain behaviors or treatments without parental notification. In the era of health reform, there are several unintentional challenges faced by individuals insured as dependents on someone else's policy. Disclosure occurs most frequently through the explanation of benefits (EOB) forms sent to policyholders by their insurance company (English & Ford, 2004, American Academy of Pediatrics, 2016). Typically, the EOB provides information about the individual who received care, who they saw for their care, the type of care obtained, financial information (outstanding balances) and may include information on any prescriptions that were ordered. Under the Affordable Care Act (ACA) dependents may be covered under a parent's policy until age 26 and for many newly insured dependents, confidentiality may be compromised, particularly in cases of sexual abuse or violence where the parent or partner is both perpetrator and policyholder (English & Ford, 2004, American Academy of Pediatrics, 2016).

Ethical Issues

Over the last several decades, the protection and promotion of sexual and reproductive rights of the adolescent has evolved, in part, as a response to changes in technologic advances, expanding knowledge and legal rulings (Grady, 2015). In addition to the legal challenges encountered in the provision of reproductive health care to adolescents, providers face ethical issues related to the fiduciary relationship (to act in the best interest of the patient and subordinating one's own interest) between the provider and the adolescent patient (Katz & Webb, 2016, pg. e2). While universal ethical principles (beneficence, respect, justice and non-maleficence) exist, an individual's interpretation may vary based on their own personal belief system. For example, practitioners who believe in abstinence only until marriage, may not offer contraceptive teaching or options to the adolescent or may feel an obligation to share that confidential information with the adolescent's parent or guardian. Providers, who offer services to adolescents, need to evaluate their own values and if there is a conflict, practice policies should clearly define the philosophy of the practice and the ability or willingness of individual providers to offer confidential reproductive services.

Conclusion

Laws governing sexual and reproductive health and rights of minors varies from state to state, requiring health care providers to educate themselves regarding the basic rights afforded to minors in their particular state and community. The right to consent and the right to confidential health care are two challenging issues faced by care providers in making decisions that are both legally and ethically in the best interest of the minor seeking reproductive health care. The Guttmacher Institute (<http://www.guttmacher.org/>), an organization dedicated to ensuring the highest standard of sexual and reproductive health is provided worldwide, reports that in the US, although there were restrictions on abortion services, there were no new legal initiatives that would reduce access to publically funded family planning services. It is significant that in 2014, all major actions on publically funded services sought to expand access to services in areas of contraceptive services, confidentiality and expedited partner treatment of sexually transmitted infections (Guttmacher, 2017). As the US Congress works toward revisions to the Affordable Care Act, it is unclear what legal initiatives will be introduced or how those initiatives might impact access to publically funded family planning services, particularly for adolescents. Providing comprehensive, evidence-based reproductive health care to adolescents is not without

its challenges. Becoming a strong advocate for this vulnerable population offers providers an opportunity to have a direct impact on the lives of their adolescent patients. Developing a close patient/provider relationship offers adolescents a safe haven where they might learn skills, such as coping and decision-making, which will help them navigate the turbulent years of adolescence and mature into responsible adults, capable of making healthy lifestyle choices.

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