Risk Management Issues

Ronald W. Schneider, Jr.
Labor and Employment Practice Group
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Risk Management Issues

Treatment of Minors

Patient Confidentiality

Board Complaints
Aspects of Minors’ Health Care

Consent to treatment

Access to and control of PHI and medical records

Mandatory Reporting
Consent to Treatment
General Rule

Minor: an under 18 years of age.

Practitioners must obtain consent of a parent or guardian for treatment of a minor, although the minor generally is involved in the process.

Generally accepted that one parent may consent to treatment, but note *Donna L. Andrews v. The Board of Social Worker Licensure*, 9/2/05.
Exceptions to the General Rule

Emergency Care.

Minor’s status. *Some* minors may consent to *all* health care treatment.

Sensitive types of treatment. *All* minors may consent to some health care treatment.
Emergency Services

Emergency care may provide Implied Informed Consent for treatment of minors.

Determined in the reasonable judgment of a health care practitioner.

If the delay that would be caused by obtaining parental consent would present a risk of serious harm to the minor.
Minor’s Status –
Some minors may consent to all treatment

A minor may consent if:

- Independent. Minor has been living separately from parents or guardians for at least 60 days and is independent of parental support.
- Married. Minor is or was legally married.
- Military. Minor is or was a member of the Armed Forces of the U.S.
- Emancipated. Minor has been emancipated by the court pursuant to 15 M.R.S.A. § 3506-A (age 16 or older)

22 M.R.S.A. § 1503.
Sensitive Types of Treatment ---
All minors may consent to certain care.

All minors may give consent to certain sensitive types of treatment where an obligation of parental consent may be an obstacle to treatment and, therefore, may not be in the best interest of the minor.
Sensitive Types of Treatment
Include

Family planning services, including contraception, pregnancy testing and emergency contraception.

Testing and treatment of STDs, including HIV, or drug or alcohol abuse by a physician.

Treatment of drug or alcohol abuse or for emotional or psychological problems.
Sensitive Types of Treatment
Include (continued)

Treatment of venereal disease or drug or alcohol abuse in the hospital setting, but parental consent is required if hospitalization continues for more than 16 hours. 22 M.R.S.A. § 1823.

Collection of sexual assault evidence through a sexual assault forensic examination. 22 M.R.S.A. § 1507

Consent to give blood by a 17-year old. 22 M.R.S.A. § 1502-A.
Sensitive Types of Treatment: Abortion Services

A minor may consent to an abortion if she accomplishes one of the following:

- Provides the physician performing the abortion with her informed written consent and the written consent of a parent or another adult family member such as an aunt or grandmother.
- Provides the physician performing the abortion with her informed written consent and receives abortion counseling from a physician or an approved counselor who may be a psychiatrist, psychologist, social worker ordained clergy member, PA, NP, guidance counselor, RN or LPN.
- Provides the physician performing the abortion with her informed written consent and a court order.

22 M.R.S.A. § 1597-A.
Practitioner Retains Discretion to Notify Parents

Statutory provisions regarding sensitive types of treatment permit but do not require practitioners to rely on minor’s consent.

Practitioner retains the discretion to notify the parents if he/she believes that failure to do so would “seriously jeopardize the health of the minor or would seriously limit the practitioner’s or provider’s ability to provide treatment.” 22 M.R.S.A. § 1505(2).
Immunity for Good Faith
Reliance on Minor’s Consent

A practitioner who takes reasonable steps to determine that a minor is entitled to consent to health care treatment is immune from liability for a parent’s claim that the practitioner provided care without parental consent.

22 M.R.S.A. § 1504.
Specific To D.O.s

Treatment of minors

No obligation to obtain consent of a parent for treatment of venereal disease or abuse of drugs or alcohol or for the collection of sexual assault evidence through a sexual assault forensic examination.

32 M.R.S.A. § 2595
Access to and Control of PHI and Medical Records

Generally, parents have the legal authority for control of and access to PHI and medical records of a minor.

However, a minor who may consent to health care treatment is entitled to the same confidentiality rights as adults. 22 M.R.S.A. § 1505(1), 1711-C(12).
Administration of Medication in Schools

All public and private schools must have a written local policy and procedure for administering medication, including the training of unlicensed personnel. 20-A M.R.S.A. § 254(5) and D.O.E. Rule Chapter 40, *Rule for Medication Administration in Maine Schools.*

Includes provision for self-administration of emergency medication from an asthma inhaler or an epinephrine pen with prior written approval of the primary care provider and parent. 20-A M.R.S.A. § 254(5)(C).
Rights of Divorced Parents to Access PHI

Family law presumption is “shared parental rights and responsibilities.”

Generally, this means that each divorced parent has the right to participate in medical decision-making for the minor child and to access PHI.

Where the child resides and the parent with whom the practice has the primary relationship has no bearing on access.
“Red Flags” Against Access

Divorced judgment limiting one parent’s right of access.

Court order determining parental rights and responsibilities, if parents never married.

Court order terminating parental rights resulting from DHHS action.

Protection from harassment or abuse order.
Related Issues

Confidentiality and duty to report

Confidentiality vs. public information.

Confidentiality does not mean that nobody else will ever be told and the information will never be acted on.

Confidentiality is expected to be maintained within a “control” or “need to know” group.
DUTY TO REPORT

Maine law imposes duty on school officials, teachers, guidance counselors, and mental health counselors to report suspected abuse or neglect of a child.

Any person may report suspected abuse or neglect.

Immunity for good faith reporting.
DUTY TO REPORT

Health care practitioners and other adults in possession of authority over minors are required to report suspected abuse or neglect to the DHHS Bureau of Child & Family Services at 1-800-452-1999. 22 M.R.S.A. § 4011-A.

“Abuse or neglect” means “a threat to a child’s health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child.” 22 M.R.S.A. § 4002(i).

Report is required to District Attorney if alleged wrongdoer is not a person responsible for the child.
Patient Confidentiality
Two Components of HIPAA

HIPAA Privacy Rule: Can I disclose an individual’s PHI to a third party?

HIPAA Security Rule: How do I protect electronic PHI from being accessed by a third party?
Can I disclose an individual’s PHI to a third party?
Privacy Rule

No.

unless authorized by the individual or an exception applies.
Common Exceptions

TPO = treatment, payment, health care operations

Worker’s compensation

Court order (Subpoena not sufficient)

Public health

Law enforcement (limited)

Required by law

Emergencies
Minimum Necessary

Covered entities must disclose the minimum amount of PHI necessary to unless accomplish the purpose of the disclosure unless:

To health care provider related to treatment of individual

To the individual

As authorized by the individual
Security Rule

How do I protect electronic PHI from being accessed by an unauthorized third party?
Security Rule

Perform a risk analysis
Address the most likely risks that would cause the highest magnitude of harm.
Security Rule

Common tools:

- Data encryption
- Strong passwords / 90 day password cycle
- Automatic logoff
- Door locks
- Personnel authorizations
Compliance in a Nutshell

Privacy

Adopt policies and procedures

Have a suite of documents to make the policies operational - disclosure requests, authorizations, disclosure logs, potential breaches, NPPs, BAAs

Train employees annually

Sanctions, not retaliation

Security

Risk analysis + meaningful response
HIPAA Breach - Investigation

If a suspected HIPAA violation is reported, it should be immediately investigated by the Compliance Officer.

The investigation should be thoroughly documented.

If it is determined that a breach has occurred, then breach notification is required.
HIPAA Breach – Corrective Action

Take corrective actions to ensure the breach does not occur again

- IT Firewalls
- Sanctions
- Additional employee training

Document the breach on a log
HIPAA Breaches

• Record Surfing

• Unlimited access to protected health information by employees

• Failure to comply with “minimum necessary” rule.

• Subpoenas

• Providing more than authorization allows
Preparation

• Managing an OCR investigation begins long before you ever learn about a complaint or an OCR investigation.

• Evaluate your compliance now.
  
  • Privacy Officer
  • Documents
Evaluate & Update HIPAA Related Documents

• Evaluate your Notices of Privacy Practices
  • Is this what your practice really does?

• Evaluate your Policies and Procedures
HIPAA Training & Staff Education

• Robust HIPAA Training
  • Timing
  • Materials
  • Regularity

• Buy-In
  • Record attendance

• Staff awareness of consequences of breach
Buy-In

“Buy-in” begins at the top.

- Leadership of the practice
- All Physicians and other Providers
- All Nurses, Medical Assistants and other staff
- Billers, coders, reception
An OCR Complaint Arrives …

Our Reference number: 

Dear 

Please be advised that the Department of Health and Human Services (HHS), Office for Civil Rights (OCR) received a complaint on alleging that is not in compliance with the Federal Standards for Privacy of Individually Identifiable Health Information and/or the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164, Subparts A, C, and E, the Privacy and Security Rules). Specifically, the complainant alleges that impermissibly disclosed more protected health information (PHI) than was authorized to a third party. In addition, the complainant alleges that he was retaliated against for complaining to. These allegations could reflect a violation of 45 C.F.R. §§ 164.502(a), 164.502(b), 164.530(c), and 164.530(g).

OCR enforces the Privacy and Security Rules, and also enforces Federal civil rights laws that prohibit discrimination in the delivery of health and human services because of race, color, national origin, disability, age, and, under certain circumstances, sex and religion.

OCR is responsible for enforcing the Privacy and Security Rules as they apply to “covered entities.” Covered entities include health care clearinghouses, health plans, and health care providers that transmit health information in electronic form in connection with a transaction for which HHS has adopted standards. See 45 C.F.R. Part 162.

To learn more about what types of providers are covered entities, please go to http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/index.html and click on “Are You a Covered Entity?” You can also find helpful information about the Privacy and Security Rules on OCR’s website, www.hhs.gov/ocr/privacy/index.html. Among other things, the website will lead you to a summary of the Privacy and Security Rules, guidance and fact sheets about the Privacy and Security Rules, and answers to hundreds of frequently asked questions. If you do not
Responding to an OCR Complaint

• Note the two websites provided by OCR
  • http://www.hhs.gov/ocr/privacy/index.html
  • http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/index.html

• Evaluate what you know
  • No Complaint is provided.

• Involve Counsel

• Develop a Strategy
Response Strategy

Think Broadly

• Show OCR all the ways that you are compliant

• Provide policies and procedures to demonstrate compliance

• Take “proactive” corrective action
Proactive Corrective Action

Figure out what you did wrong and address the problem

- Write New Policies
- Conduct Trainings
- Change Internal Processes
Data Requests

Please provide the following information and supporting documentation:

1. A written detailed response to the allegation that [redacted], including who owns and operates [redacted], where [redacted] is registered to do business, and identify the custodian of records by name, address, and telephone number.

2. A copy of [redacted] policy on releasing information to law enforcement.

3. A copy of [redacted] policy and procedures on uses and disclosures of PHI.

4. A copy of [redacted] policy and procedures on safeguarding patients PHI.

5. Evidence that workforce members received training on the Privacy Rule prior to this incident and evidence of any re-training as a result of this incident.

6. Please also include any other information that would be useful to OCR in this investigation.

DATA REQUEST

Please provide complete responses to each of the following requests for information and/or data:

1. The organizational structure of [redacted] (e.g., partnership, professional corporation, LLC), including who owns and operates [redacted], where [redacted] is registered to do business, and identify the custodian of records by name, address, and telephone number.

2. Respond to the allegation that [redacted] impermissibly disclosed [redacted] PHI when [redacted].

3. Provide a copy of [redacted] policies and procedures for uses and disclosures of PHI.

4. Provide a copy of [redacted] policies and procedures for safeguarding PHI.

5. Provide a description and documentation of Privacy Rule training for [redacted] employees.

6. Provide any additional information which would assist OCR in investigating this complaint.

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DATA REQUEST

Please provide complete responses to each of the following requests for information and/or data:

1. Respond to the allegation that [redacted] disclosed more than was authorized [redacted]
   a. Please provide a copy of any signed authorization forms with your response.

2. Respond to the allegation that [redacted] retaliated against [redacted]

3. Provide a copy of [redacted] policies and procedures for uses and disclosures of PHI.

4. Provide a copy of [redacted] policies and procedures for complying with the minimum necessary requirements of the Privacy Rule.

5. Provide a copy of [redacted] policies and procedures for safeguarding PHI.

6. Provide a copy of [redacted] policies and procedures for refraining from intimidating or retaliatory acts.

7. Provide a description and documentation of Privacy Rule training for [redacted] employees.

8. Provide any additional information which would assist OCR in investigating this complaint.
Board Complaint Process

Board supposed to notify licensee no later than 60 days of complaint.

No pre-screening of complaints.

Licensee to respond within 30 days.

Response shared with the complainant, unless the board determines that it would be detrimental to the health of the complainant.
Board Complaint Process

If Board concludes after the response that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee.
Informal Conference

Board required to provide adequate notice.

The complainant may attend and may be accompanied by up to 2 individuals, including legal counsel.

The conference conducted in executive session, unless otherwise requested by the licensee.

Complainant allowed a reasonable opportunity to speak.

Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.
Chapter 21: USE OF CONTROLLED SUBSTANCES FOR TREATMENT OF PAIN

Chapter 17: PHYSICIAN/PHYSICIAN ASSISTANT - PATIENT BOUNDARIES - GIFTS

http://www.maine.gov/sos/cec/rules/02/chaps02.htm

http://www.maine.gov/osteo/ --- Board website
Discussion
Question and Answer

Ronald W. Schneider, Jr., Esq.
Bernstein Shur
207-774-1200
rschneider@bernsteinshur.com