

RISK MANAGEMENT ARTICLE

Special Considerations for Treating Minors

Part Two: Confidentiality, Suspected Neglect and Abuse

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Most healthcare professionals are well-versed when it comes to the requirements for consent, privacy, and confidentiality in the treatment of adult patients. However, there are special considerations for pediatric patients, including infants, children, and adolescents, that dental professionals must keep in mind.

In Part One of *Special Considerations for Treating Minors*, we discussed the basic principles of obtaining informed consent to treat minor patients, and general risk management recommendations to help dental professionals navigate these concerns.

Part Two of this article will examine additional legal and ethical concerns related to treating minors, including privacy and confidentiality concerns, and instances of suspected abuse or neglect.

Confidentiality

The privacy rights of minors and who can access their protected health information are similar to what was discussed in Part One regarding informed consent.

There are specific provisions that vary by state, but in general minors cannot exercise their HIPAA privacy rights over their protected health information until they are 18 years-old or have reached the age of majority.

In most states, until age 18, a parent or guardian who is deemed the patient's "personal representative" is permitted to access the minor's health information records.

HIPAA Privacy Standards

The Department of Health and Human Services has developed provisions that address protected health information for minors that are available on their website.

Parents and guardians are considered to be the minor's personal representative if they have the right to make their health care decisions. As personal representatives, parents/guardians generally have access to their children's protected health information.

There are specific circumstances where parents may not be the personal representative of their minor children. A minor is considered "the individual" who can exercise their rights under the privacy rule in three circumstances:

- When the minor may legally receive care without parental consent, and the minor (or a court) has consented to the care.
- When a parent has assented to an agreement of confidentiality between the health care provider and the minor.
- When the parent is not the personal representative of the minor and does not automatically have the right of access to health information (unless the minor requests that the parent have access).

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State Law

Each state has laws that allow minors to give their consent for treatment in certain health care situations, including emergency care, substance abuse, mental health, and/or pregnancy.

Some states also have laws that allow minors to consent to care if they meet certain conditions, such as being emancipated, living apart from their parents, military service, if the minor is a parent, or if they have graduated from high school. Check with your state to see under which circumstances a minor may consent to their own care and may exercise HIPAA rights regarding the records of that care. For minors, when it comes to parental access to information, HIPAA automatically defers to state laws unless they are silent or unclear.

Many states have laws regarding the disclosure of information to parents, but some do not allow disclosure without the minor's permission, and some are silent on the issue. In these cases, HIPAA gives discretion to the provider or health plan. Check to see what your state laws dictate.

Suspected Neglect

How do you identify neglect? How is it different from informed refusal? Dental neglect is defined by the American Academy of Pediatric Dentistry as:

"...willful failure of parent or guardian to seek and follow through with treatment necessary to ensure a level of oral health essential for adequate function and freedom from pain and infection."

Failure to seek or obtain proper dental care may result from various factors such as lack of finances, lack of perceived value of oral health care, or low health literacy.

Just because a parent or guardian refuses treatment does not necessarily constitute neglect on their part. Try to obtain the reasons behind failure to seek care; do not assume it is neglect. If there is concern about something such as finances or lack of knowledge, do your best to address the underlying issue and document these discussions in the dental record.

Refusing care is generally not considered neglect until two conditions are met:

- A parent/guardian has been properly educated regarding the nature and extent of the child's condition, the specific treatment needed, and available options.
- The parent continues to fail to seek or obtain essential dental care for their child.

In your professional opinion, if both conditions have been met, and you have documented your discussions with the parent/guardian regarding these concerns, it is your responsibility to report the situation to your local child protective services for the wellbeing of your patient.

Suspected Abuse

What can dentists do to help potential victims of child abuse? What signs can dentists look for, and what should they do if they suspect abuse?

A careful and thorough intraoral and perioral examination is necessary in all cases of suspected abuse and neglect. In more than half of child abuse cases the minor displays physical signs of craniofacial, head, face, and neck injuries.

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Dentists and RDH licensed DA's, are legally mandated in all 50 states and the District of Columbia to report suspected child abuse and neglect. Failure to do so can expose dentists to legal liabilities, fines, loss of license, or even imprisonment.

Duty to report supersedes many common law privileges. Any suspected instances of child abuse or neglect must be reported to your local child protective services office.

Summary

Pediatric dental patients have special clinical, liability and ethical considerations. Understand how HIPAA and your state's laws protect a minor's right to privacy, and under what circumstances information can or cannot be shared with a parent or legal guardian. Report all cases of suspected child abuse or neglect to the proper authorities.

Use the risk control recommendations in this article to help assess and enhance your facility's practices regarding care of minor patients.

Special Considerations for Treating Minors: Risk Management Recommendations

Privacy

- Review a HIPAA privacy notice with patients and their parent/legal guardian when they give their consent to treatment
- Offer minor patients a private space away from parents/guardians for interviews, dental examinations, and dental procedures
- Allow minor patients to invite a family member, peer, or other chaperone to be present during discussions and examinations
- Educate minor patients about situations when information will be shared with parents or guardians
- Verify the method which may be used to contact the minor patient or their parent/guardian, and if it is by phone, whether messages may be left at that number

Confidentiality

- Have a written policy in place that protects patients' privacy rights
- Ensure there is a policy/procedure in place regarding sharing information with family and staff members
- Obtain consent from the minor or their parent/guardian before sharing dental information
- Promote minor's emerging autonomy whenever possible
- Make minor patients aware that certain billing situations may affect confidentiality
- Ensure policies address documentation issues such as access to electronic health records via online patient portals and billing procedures

Resources:

American Academy of Pediatric Dentistry (AAPD). (2016). Clinical Practice Guidelines: Guideline on Oral and Dental Aspects of Child Abuse and Neglect. 38(6).
English, A. and Ford, C.A. The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges. *Perspect Sex Reprod Health*. 2004 Mar-Apr;36(2):80-6.
National District Attorneys Association. Minor Consent to Treatment Laws. 2013. [http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20\(2\).pdf](http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20(2).pdf)