

Legal Issues in Sexual and Reproductive Health Care for Adolescents

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Adolescents are frequent visitors to the emergency department (ED), and many use the ED as their only source of care. They may choose to obtain treatment in the ED for the anonymity and privacy it affords and may be unaccompanied by a parent who can provide consent for treatment. The provision of sexual and reproductive health care to adolescents in the ED presents challenges to the medical provider specifically with regard to consent and confidentiality issues. This review discusses the various state and federal laws governing the provision of sexual and reproductive health care services to adolescents, including the diagnosis and treatment of sexually transmitted infections and HIV, contraceptive services, prenatal care, and abortion services. We review the circumstances under which an adolescent is entitled to confidential care, when parental consent for treatment may not be required, and when parental notification may be necessary.

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The emergency department (ED) is often called upon to provide medical treatment to adolescents on an emergent and nonemergent basis. Adolescents are frequent visitors to pediatric and adult EDs, accounting for 10% to 15% of all pediatric ED visits and more than 5% of adult ED visits [1,2]. Adolescents may choose to seek treatment in an ED because of the anonymity and privacy it affords [3] and are frequently unaccompanied by a parent or guardian who can provide consent for treatment [2]. A study analyzing data from the 1997 Commonwealth Fund Survey of the Health of Adolescent Girls found that 4.6% of adolescents surveyed, representing 1.5 million adolescents in the United States, use the ED as their only source of care [4]. These adolescents resided in urban, suburban, and most often, rural communities. They were significantly more likely to engage in risky behaviors such as alcohol and drug use, had higher rates of depression, and were almost twice as likely to report a history of physical or sexual abuse [4].

Caring for adolescent patients presents a number of challenges for the medical provider in the ED, particularly when that care relates to sexual and reproductive health. Complaints related to sexual and reproductive health are common among adolescent females presenting to the ED

[1,2]. Their need for services may include sexually transmitted infection (STI) and HIV testing, diagnosis, and treatment; pregnancy testing and counseling; contraceptive services; counseling and referral for termination of pregnancy; referral for prenatal care; and treatment for sexual assault and abuse [5]. An adolescent's ability to consent to confidential sexual and reproductive health care is governed by a variety of state and federal laws. It is imperative that the ED care provider be familiar with these laws. This article reviews the medicolegal issues arising from the provision of sexual and reproductive health care services to adolescents.

Consent

Minor children, including adolescents, do not have the legal capacity to give consent for their own medical care. State law determines the age at which children are no

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longer considered to be minors and may give consent. In most states, the age of majority is 18. Until a child reaches the age of majority, consent must be obtained from a parent or legal guardian. The right of parents to make decisions on behalf of their children with minimal governmental interference has long been recognized. The United States Supreme Court has held that the right of parents to make decisions concerning the care and upbringing of their children is protected by the Due Process Clause of the Fourteenth Amendment [6,7]. Implicit in the requirement of parental consent is the recognition that minors lack the cognitive ability and maturity to provide informed consent for medical treatment. As children mature and approach adulthood, their ability to comprehend the elements of informed consent, including the nature, risks, and benefits of the proposed treatment and alternatives, improves. Several studies have found that adolescents have the same ability as adults to analyze risks and benefits and make informed decisions [8-10]. The American Academy of Pediatrics recommends that physicians solicit the minor patient's assent to treatment when developmentally appropriate [11].

A parent's right to make decisions regarding the welfare of the minor child is not unlimited. Recognizing their vulnerability, the state maintains a right and a duty to protect children from harm and may override parental authority when necessary to safeguard a child's health or safety. Under the doctrine of *Parens Patriae*, the state has the right to intervene to protect a minor from risk of imminent harm or death when the parent is unable or unwilling to do so [12]. This doctrine forms the basis for laws permitting state intervention on behalf of abused children and for intervening when a parent refuses to authorize treatment for a child's life-threatening medical condition [12].

Confidentiality

The requirement of parental consent is in conflict with the adolescent's desire for confidential health care. Confidentiality is an important consideration for adolescents seeking sexual and reproductive health care. A significant number of sexually active adolescents have reported forgoing health care [13]. Girls in particular cited lack of confidentiality as a reason for forgoing care [14]. These girls were more likely to be sexually active, have a history of STI, and report nonuse of birth control with their last sexual activity [14]. A recent study of urban girls found that only 45% of sexually active girls had obtained a pelvic examination, with the delay between onset of sexual activity and gynecologic care averaging 13 months. The initial examination was often prompted by pregnancy or the presence of an STI [15]. This same study found that having access to confidential care was an important factor in promoting preventive gynecologic care [15]. Studies have shown that approximately 50% to 70% of adolescents

discuss reproductive health issues, including visits to family planning clinics, with their parents [16-18]. Nonetheless, a substantial minority do not, many of whom report that they would stop using some or all sexual and reproductive health services if parental notification were required [19]. Of those who would discontinue use of such services, 99% would continue to engage in sexual intercourse [19]. Professional organizations including the American Medical Association, the American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the Society for Adolescent Medicine have all endorsed confidential sexual and reproductive health services for adolescents as a means of increasing the likelihood that adolescents will seek care in a timely manner [8,20].

To ensure confidentiality in adolescent sexual and reproductive health care, state and federal laws allow minors to consent for specific medical services. Courts have also created common law exceptions to the requirement of parental consent for certain categories of minors. The care provider in the ED should be familiar with the circumstances under which the adolescent may consent to sexual and reproductive health services, as well as the circumstances under which those services may remain confidential.

Exceptions to Parental Consent

Emergency Medical Services

In the event of an emergency, parental consent for the treatment of a child is implied by law. The law assumes that the medical provider has parental consent to act in the child's best interest so as not to endanger the minor's health by a delay while seeking consent [21]. This common law principle has been codified by federal law. The Emergency Medical Treatment and Active Labor Act mandates a medical screening examination (MSE) for every patient seeking treatment from an ED that receives federal funding. If the MSE identifies an emergency medical condition (EMC), the patient must be treated, stabilized, and if necessary, transferred to a more appropriate facility [22]. The legal definition of an EMC is broad and includes life- and limb-threatening conditions as well as conditions causing severe pain and conditions with the potential for serious impairment if left untreated. The Emergency Medical Treatment and Active Labor Act applies to unaccompanied minors seeking emergency medical care in the ED [23]. The ED should attempt to contact the minor's parent or guardian to obtain consent, but the performance of the MSE and the stabilization of any EMC should not be delayed. When prior consent is not obtained, the ED should inform the parent as soon as possible. If an EMC is not identified, consent should be obtained before further care is provided [21,23]. An adolescent who presents to the ED with a gynecologic

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