Confidentiality in Pediatric and Adolescent Gynecology: When We Can, When We Can't, and When We're Challenged

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ABSTRACT

Maintaining confidentiality is an important aspect of adolescent health care. Different states and provinces have laws around the provision of confidential health care to minors for specific health concerns such as reproductive health, mental health and substance abuse. However, there are situations where confidentiality cannot be assured, particularly if the adolescent is being abused. Educating teens and parents about the circumstances in which confidentiality is necessary is sometimes challenging for the clinician. Moreover, with the advent of electronic medical records, patient portals and other requirements to share health information with parents and the adolescent patient, confidentiality is sometimes not easy to assure. The following is the Elsevier Lecture from the 2015 Meeting of the North American Society for Pediatric and Adolescent Gynecology.
Key Words: Confidentiality, Adolescents, Reproductive health, Mental health, Substance abuse, Electronic medical records

Introduction

According to the World Health Organization, in 2012, 1.3 million adolescents died mostly from preventable or treatable causes, which include motor vehicle accidents, other accidental injuries, interpersonal violence, suicide, chronic illness, and HIV. The most common causes of morbidity in adolescents are high-risk behaviors such as unprotected sex, tobacco use, alcohol use, and use of illicit substances. Moreover, the prevalence of mental health challenges for adolescents has escalated worldwide.[1]

These facts support that one of the essential elements of optimal adolescent health care is access to care, which addresses adolescent concerns for confidentiality.[2] Key strategies in approaching the adolescent to ensure developmentally appropriate health care include: assessing the teen's developmental level, discussing the caveats and parameters for confidentiality with the adolescent and parent, appropriately ensuring confidentiality, time alone, risk assessment at most visits, and having a system for follow-up of confidential results.

Confidentiality, in the context of adolescent health care, is defined as: information about teen's health care is not disclosed without her/his permission. The rationale for the need for confidentiality includes: to avoid negative health outcomes, protect the adolescent's health, and to protect public health. Research supports the need to provide adolescents with confidential care for certain health concerns. It has been shown that if confidentiality is not assured, adolescents avoid or stop using health services, are less willing to use family planning services for prescription contraception and sexually transmitted infection (STI) screening/treatment, will not seek health care or be honest with practitioners, and will not go to a medical home for services.[3–5]

National medical organizations support the need to provide confidential care for adolescents. More than 20 years ago, the American College of Obstetricians and Gynecologists, American Academy of Family Practice, American Academy of Pediatrics, and the Society for Adolescent Health and Medicine, all called for such care, with the education of adolescents and parents about confidentiality. The rationale for this unanimous approach include the need for confidentiality in particular health care settings such as: preventive health, testing and treatment for STIs and HIV, contraception, pregnancy-related services, abortion, and other reproductive health services and concerns for specific populations of adolescents.

The assurance of confidentiality for adolescents in certain settings reflects the ethical principles of respect for persons, the adolescent's developing individual autonomy, and the tenet that the nonautonomous are entitled to protection. The concept of beneficence is also part of the rationale for confidentiality. As health care providers, we want to minimize harm, respect individual decision-making, and do all for our patient's well-being.

We will review when confidentiality can be assured, when it cannot be guaranteed, and challenges in the provision of confidentiality because of the realities of compensation for services and mandated practices of health information sharing.

Confidentiality: When We Can

A common scenario is a young woman younger than the age of 18 years who presents to the office with a chief

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complaint of a menstrual disorder. Without her mother present, she discloses that she is sexually active and sporadically uses condoms. She does not want you to tell her mother that she is sexually active. Current guidelines require you to screen her for STI and HIV and because her last menstrual period was more than a month ago, you need to do a pregnancy test. Additionally, you wish to counsel her about pregnancy and STI prevention. Can you provide these services and how can you do this?

Confidentiality

When trying to determine whether an adolescent might receive confidential care, there are several factors to consider. State laws in the United States and province laws in Canada are the first consideration. However, there are others including the patient's age, developmental level, and relationship with parent/guardians.

Developmental Considerations

The health care provider must determine the developmental stage into which the patient falls. Adolescent cognitive development generally follows a sequence outlined in Table 1 as the teen progresses from early adolescence (middle school years), middle adolescence (high school years), and late adolescence, which is 18 years or older when they have full legal rights as an adult. Assessment of the patient's degree of autonomy and likelihood of adherence to medical recommendations should also occur. By allowing the adolescent to independently make health care decisions, the health care provider is supporting the adolescent's development as a health consumer.

Additionally, one must determine the adolescent's competence to consent. This is generally on the basis of capacity to understand alternatives and make voluntary choice, previous ability to cope with illness, emotional stability, and previous adherence to medication/treatment.

It is important to communicate the concept of confidentiality to the adolescent and the parent before the necessity of using it. The 11-year-old visit is an ideal time to introduce the concept of time alone or confidential visit, because this is a preventive care visit that requires 3 vaccines generally recommended by the Advisory Committee on Immunization Practices and the American Academy of Pediatrics (AAP). First, ground rules should be set with the adolescent and parent that at the next visit the adolescent will have time alone with you to discuss health concerns. However, it is also essential to facilitate collaborative decision-making by assuring the parent that there will be time with you, the adolescent and parent during the visit and, if the parent wishes, time alone with the parent. This reinforces that parent–adolescent communication on matters related to sexuality, mental health, and substance use is crucial and valued. It is also recommended that confidentiality is reviewed with the adolescent alone so that a plan is in place to determine what information may be disclosed to the parent, what may not, and the limits of preserving confidentiality under certain circumstances.

Table 1
Adolescent Cognitive Development

Stage of Development
Early adolescence (12-14 years)
Retains concrete thinking and conformity of childhood
Begins to separate from parents and identify with peers
Middle adolescence (15-17 years)
Moral choices on the basis of abstract values
Imagines future consequences of actions
Peer influences, risk-taking behaviors, conflict with parents peak
Late adolescence (18-21 years)
Formal operational thinking
Fuller appreciation of consequences of actions
Development of personal values; appreciate parental values

The Legal Context for Minor Consent Laws

Laws around adolescent confidentiality are complex and are mostly state- and province-specific. They are generally on the basis of legislation, statutes, and court decisions. These laws try to balance concepts of family law such as the status of minor children vs the rights and responsibilities of parents/guardians, with reproductive rights of the individual. All states have minor consent laws with some laws on the basis of the minor's status and some laws on the basis of services that the minor is seeking. A number of states allow for health care provider discretion to disclose information. Additionally, the Health Insurance Portability and Accountability Act (HIPAA) is a federal privacy law that is an important consideration when caring for patients aged 18 years or older.

Consent Laws on the Basis of the Status of the Minor

In the United States, a minor younger than age 18 years might have acquired other legal status such as emancipated minor, mature minor, minor living apart from parents, incarcerated minor, or a minor in foster care. All of these special designations have ramifications with regard to the right of the minor to obtain confidential health care.

Emancipation is defined as renunciation of parental rights to a child. An emancipated minor is one who is married, in the military, lives away from parents, is financially independent, has a child, or whose parent fails to fulfill parental support. Moreover, a minor who is a parent may provide consent for their own child.

The definition of mature minor is a minor who has sufficient autonomy or intellect to provide informed consent for medical care. One must consider age and developmental maturity, gravity of illness vs risks of therapy when determining whether a minor is a mature minor. Competency to consent can be assigned to a minor if the minor has the capacity to understand alternatives, to make voluntary choices, has a previous ability to cope with illness, emotional stability, and previous adherence to medication/treatment.

Consent Laws on the Basis of Services

Most states have enacted laws assuring confidential care for minors on the basis of the type of medical care, specifically, sexual health (STI, contraception, pregnancy, and pregnancy options), outpatient mental health, and

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