



Position paper

## Confidentiality Protections for Adolescents and Young Adults in the Health Care Billing and Insurance Claims Process



The Society for Adolescent Health and Medicine and the American Academy of Pediatrics

**Keywords:** Adolescent; Young adult; Confidentiality; Healthcare; Insurance; Billing

### A B S T R A C T

The importance of protecting confidential health care for adolescents and young adults is well documented. State and federal confidentiality protections exist for both minors and young adults, although the laws vary among states, particularly for minors. However, such confidentiality is potentially violated by billing practices and in the processing of health insurance claims. To address this problem, policies and procedures should be established so that health care billing and insurance claims processes do not impede the ability of providers to deliver essential health care services on a confidential basis to adolescents and young adults covered as dependents on a family's health insurance plan.

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### Positions

The Society for Adolescent Health and Medicine, American Academy of Pediatrics, and American College of Obstetricians and Gynecologists endorse the following positions:

- (1) Health care providers should be able to deliver confidential health services to consenting adolescents and young adults covered as dependents under a family's health insurance plan. These sensitive services include care related to sexually transmitted infections (STIs), contraception, pregnancy, substance use/abuse, and mental health, as well as care for other health issues that an adolescent or young adult considers sensitive. Assurance of confidentiality does not obviate the need for parents or guardians to be actively engaged in the care of their adolescent children, especially those who are minors, nor does it obviate the need for health care providers to assist adolescents in engaging their parents for appropriate support.
- (2) Policies and procedures should be established to ensure that health care billing and insurance claims processes such as explanation of benefit (EOB) notifications do not impede the confidential provision of health care services to adolescents and young adults. Specifically:
  - (a) The Department of Health and Human Services should issue guidance to clarify the meaning of the terms "endanger" and "endangerment" in the special confidentiality provisions of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule [1]. These provisions allow individuals to request special privacy protections when necessary to protect the health or safety of an individual. This guidance should make clear that "endangerment" includes the harms that result when access to important sensitive services, such as contraception and STI services, is impeded by fear of loss of confidentiality.
  - (b) Sending of EOBs or other similar notices should not be required when individuals insured as dependents obtain sensitive services. All avenues for eliminating these requirements should be explored, including: (1) use of provisions of the Patient Protection and Affordable Care Act (ACA) [2] that require coverage of key preventive services, including contraception and many STI services without cost sharing, thereby eliminating residual financial liability on the part of a policyholder for the services [3–5]; (2) modification or interpretation of state-level EOB requirements so they do not apply when individuals insured as dependents obtain sensitive services, especially if the policyholder has no residual financial liability; and (3) negotiation between employers and health insurers to include provisions in insurance

Position Paper of the Society for Adolescent Health and Medicine and the American Academy of Pediatrics.

contracts and policies that protect confidentiality when individuals insured as dependents receive sensitive services.

- (c) Health care professional organizations, clinicians, and policymakers should explore all available legal options for enabling health care providers to deliver confidential services to adolescents and young adults in the context of health care billing and insurance claims.
- (d) Health insurance plans and health care providers should collaborate to develop simplified mechanisms that allow individuals insured as dependents to receive confidential care. First, tools should be developed for health care providers to use in discussions with patients about their need for confidential care. Second, a simple procedure should be developed to facilitate health care provider use of the special confidentiality protections included in HIPAA. This would allow health care providers to designate that maintaining an adolescent or young adult's confidentiality for a particular service is needed and may be required by state or federal law. Insurers should honor requests made using this procedure.
- (e) Health insurers and government agencies should provide information to adolescent and young adult patients and their health care providers about ways in which billing processes can result in inadvertent disclosure of otherwise confidential information, and ways to potentially avoid this disclosure of confidential information. Health care professionals should remind their adolescent and young adult patients about the risks of inadvertent disclosure and encourage their patients to seek information about ways to avoid unwanted disclosure of confidential information.
- (f) Research is needed to determine whether existing or new policies designed to maintain confidentiality in the health care billing and insurance claims process are effective. This research should include evaluation of the interaction between confidentiality policies related to insurance and billing and those related to electronic health records [6]. To the extent that effective solutions are identified, their adoption by policymakers should be encouraged. Policies that are effective should be adopted broadly.

## Background Information

EOBs and other mechanisms for communicating billing and insurance claims information to policyholders are intended to protect policyholders and insurers from fraud and abuse and to ensure policyholders have information about services provided under their health insurance policies for which they may have some financial liability. However, these forms of communication can have unanticipated and unintended negative consequences. EOBs are notifications to policyholders that health care services were provided under a health insurance plan, including those services provided to any dependents covered by the plan. Insurers routinely send EOBs to policyholders whenever a claim for services received by a covered dependent, regardless of age, is processed. EOBs generally disclose that services were provided to a dependent, the name and profession of the provider, and the specific laboratory used or other services rendered. Accordingly, EOBs and other similar

communications can erode the confidential delivery of essential health care to adolescents and young adults [7,8]. Thus, although the ACA increased access to sensitive services through expanded coverage and less cost sharing, challenges remain as the ACA also expanded health insurance coverage for young adults, the group of individuals most vulnerable to confidentiality breaches by EOBs and other billing and health insurance claims communications.

### *Importance of confidential health services*

The importance of providing confidentiality protections for adolescents and young adults seeking sensitive services—care related to STIs, contraception, pregnancy, substance use/abuse, and mental health, as well as other care for a health issue that an adolescent or young adult may perceive as sensitive, such as electronic health records—cannot be overstated [6,9]. Numerous health care professional organizations have formal policy statements supporting the importance of confidentiality [10]. These organizations include, among many others, the American Academy of Pediatrics [6], the American Academy of Child and Adolescent Psychiatry [10], the Society for Adolescent Health and Medicine [11], the American College of Obstetricians and Gynecologists [12], and the American Medical Association [13].

### *State and federal laws and policies*

State and federal laws and policies also recognize the importance of confidentiality in health care services delivery and provide confidentiality protection. Such laws apply differently to minors and adults. It is important to note that young adults who have reached the age of majority—age 18 years in almost every state—are entitled to the same legal confidentiality protections as older adults.

Although all states have laws that specifically allow minors to provide consent for a range of sensitive services independent of their parents, variation exists among states. For example, all states allow minors to consent to the diagnosis and treatment of STIs, although some states have age restrictions (e.g., only minors over age 14 years may consent) [14]. A significant majority of states explicitly permit minors to consent to contraceptive services; in other states, minors may consent to these services on the basis of their legal status or living situation (e.g., married, emancipated, or living apart from parents) [15]. Moreover, more than half of states allow minors to consent to outpatient mental health services [16]. Finally, almost all states permit minors to consent to substance abuse counseling and treatment [16]. State laws allowing minors to consent to certain services do not guarantee confidentiality. Some states have laws that specifically prohibit providers from disclosing information about certain services to parents. Other states provide physicians with the discretion to inform parents [16]. Even if a health care provider chooses not to share or is not legally allowed to share information with the minor's parents regarding sensitive services received by the minor, breaches of confidentiality may still occur in documentation of billing and health insurance claims.

In addition to state laws, federal laws also provide a layer of confidentiality protections for both adults and minors. Federal HIPAA privacy regulations contain significant protections for individuals, including young adults and adolescents, seeking confidential health care. With regard to adults, HIPAA regulations also require the consent of patients greater than the age of 18

years before confidential health information is disclosed to parents or other family members [17]. However, an exception in HIPAA allows for, but does not require, the disclosure of protected health information without an individual's authorization when such disclosure is necessary for payment. This can result in disclosures to policyholders when an adult child is a dependent on a health plan and receives a service that leaves the parent policyholder liable for payment [17].

When minors consent for their own health care services, HIPAA regulations defer to state or other applicable law regarding whether parents have access to confidential health information about their minor children. If state and other laws are silent, HIPAA gives discretion to the health care provider whether to grant the parents access to the minor's protected health information. It is the responsibility of physicians to know the applicable laws regarding confidentiality and disclosure [14–16,18].

In addition to its general requirements, the HIPAA privacy rule also includes special confidentiality provisions that can be used when necessary to protect the health or safety of an individual. These provisions allow individuals, including young adults and minors who have consented to their own care, to:

- Request that disclosure of their protected health information not be made without their authorization. Individuals may make such requests—withhold the sending of an EOB, for example—when they believe disclosure to a family member or policyholder would endanger them [19]. Covered entities are not required to agree to such requests, but if they do agree, they are required to comply. When payment is made in full by the patient or a third party other than the insurer, a covered entity is required to withhold disclosure [20].
- Request that communications, including sending of an EOB, be made by alternate means or to a different location. Specifically, this enables a beneficiary to request communications be sent by email rather than regular mail, that phone calls to remind about appointments not be made to the beneficiary's home phone, or that mail be sent to an address other than the home address. Health care providers are required to accommodate reasonable requests of this nature. Health plans also are required to accede to such requests for these “confidential” communications but may require that the individual making the request state that disclosure of the information with respect to which the request is made would endanger the individual [19].

#### *Expanded access to sensitive health care services*

The ACA expanded access to sensitive services for both minors and young adults. For example, adult children ages 18 to 26 are allowed to remain on their parents' health insurance plans [21]. Also under the ACA, Department of Health and Human Services requires new health plans to cover specific preventive services for women without cost sharing, based on an Institute of Medicine Consensus Report. The Institute of Medicine's report recommended a range of preventive women's health services, including (1) improved screening and counseling for cervical cancer and STIs; (2) full range of Food and Drug Administration–approved contraceptive methods and reproductive counseling; and (3) annual well-women visits [22]. In addition, for both men and women, the ACA required health plans to cover without cost sharing a range of preventive services, including

some sensitive services (e.g., STI screening) recommended by the US Preventive Services Task Force [3–5].

#### *Danger to health from confidentiality loss in billing and insurance claims process*

The breaches of confidentiality that occur through the billing and insurance claims process have potentially serious consequences because protecting confidentiality for minors and young adults is critical to encouraging those individuals to access health care needed to prevent negative health outcomes [6–8,11–13,18]. Although there are positive benefits of parental involvement in an adolescent's health care, situations exist in which parental notification could place an adolescent at risk of verbal and/or physical abuse or conflict. This could lead to underutilization of essential health services by adolescents. The possibility of parental notification has been shown to contribute to forgone care or delays in seeking health care. In one survey, adolescent females younger than 18 years seeking sexual health services in US family planning clinics were asked whether they would continue to use the clinic for prescription contraception if parental notification were mandated. Although 79% of adolescent patients whose parents were aware of their family planning clinic use would continue to use these services, only 29.5% of adolescent patients whose parents were unaware of their clinic visits reported intent to continue accessing the clinic for contraceptive services [8]. Overall, 18% reported that they would engage in risky sexual behavior, and 5% would forgo STI services [8]. The risk of avoiding health care because of confidentiality concerns also exists for young adults who are covered as dependents on family policies.

Given the serious consequences of unintended pregnancy and untreated STIs, lack of access to confidential care endangers the health and well being of adolescents and young adults. In addition, when individuals who have health insurance coverage are deterred from seeking services and using that coverage to pay for it, they often turn to publicly funded clinics and services, placing a burden on the public health system and potentially fragmenting care. Ultimately, stakeholders must collaborate to implement policies that enable providers to deliver sensitive health services confidentially to individuals insured as dependents in an effort to prevent unnecessary negative health outcomes.

#### *Provisions to address confidentiality in the health care billing and insurance claims process*

Current laws and policies have established ways to improve confidentiality in the health care billing and insurance claims process [23]. Some of these pertain to private health insurance plans; others are found in state Medicaid policies. In addition, some insurers, as a matter of practice, send EOBs to the patient who is >18 years rather than to the policyholder.

Several states have adopted provisions to address confidentiality in the private health care billing and insurance claims process. Approaches include identifying situations in which EOBs do not have to be sent (e.g., when no balance is due from the policyholder); sending EOBs for sensitive services directly to the patient at an address specified by that patient and using minor consent laws to specify that the care to which the minor can consent must be confidential including in the health care billing process [18,24].

Exempting sensitive services such as contraception and STI care from EOBs is standard practice in many state Medicaid programs. A review of state Medicaid policies on EOBs conducted

found that state policies vary [25]. Significantly, many states expressly exclude information related to sensitive services, such as family planning and STI services, received by Medicaid recipients, regardless of age, from EOBs.

Protecting confidentiality in health care billing and insurance claims is essential in providing health care for adolescents and young adults. Health care providers must be able to deliver confidential health services to young people covered as dependents under a family's health insurance plan. Policies and procedures should be established so that EOB notifications do not impede the otherwise confidential provision of health care services to adolescents and young adults.

Endorsed by the American College of Obstetricians and Gynecologists and should be construed as American College of Obstetricians and Gynecologists clinical guidance.

This position paper has also been endorsed by the North American Society for Pediatric and Adolescent Gynecology.

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## Acknowledgments

The authors acknowledge Ryan Cramer, J.D., M.P.H. and Lauren Slive Gennett, J.D., M.P.H. for providing their expertise with manuscript development.

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