

# Adolescent & Young Adult Health Care in New Hampshire

## A Guide to Understanding Consent & Confidentiality Laws

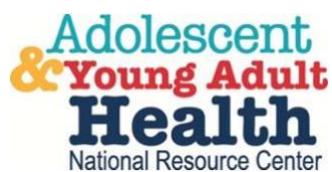
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March 2019



Center for  
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& the Law



## Contributors

This publication was created for the Adolescent & Young Adult Health National Resource Center by Abigail English, JD, of the Center for Adolescent Health & the Law, in collaboration with the Association of Maternal & Child Health Programs (AMCHP); the National Adolescent & Young Adult Health Information Center (NAHIC) at the University of California, San Francisco (UCSF); the State Adolescent Health Resource Center (SAHRC) at the University of Minnesota; and the University of Vermont National Improvement Partnership Network (NIPN).



## Adolescent & Young Adult Health National Resource Center

The National Adolescent and Young Adult Health National Resource Center (AYAH-NRC) – supported by the Maternal and Child Health Bureau – was established in September 2014 to help states improve receipt and quality of preventive services among adolescents and young adults. The AYAH-NRC is housed at the National Adolescent and Young Adult Information Center at the University of California, San Francisco, in close partnership with: the Association of Maternal & Child Health Programs; the University of Minnesota State Adolescent Health Resource Center; and the University of Vermont National Improvement Partnership Network. The Center aims to promote adolescent and young adult health by strengthening the abilities of State Title V MCH Programs, as well as public health and clinical health professionals, to better serve these populations (ages 10-25).



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The Center for Adolescent Health & the Law supports laws and policies that promote the health of adolescents and young adults and their access to comprehensive health care. Working nationally, the Center clarifies the complex legal and policy issues that affect access to health care for the most vulnerable youth in the United States. The Center provides information and analysis, publications, consultation, and training to health professionals, policy makers, researchers, and advocates who are working to protect the health of adolescents and young adults.

## Suggested Citation

English A. Adolescent & Young Adults Health Care in New Hampshire: A Guide to Understanding Consent & Confidentiality Laws. San Francisco, CA: Adolescent & Young Adult Health National Resource Center; and Chapel Hill, NC: Center for Adolescent Health & the Law, 2019. [http://nahic.ucsf.edu/resource\\_center/confidentiality-guides/](http://nahic.ucsf.edu/resource_center/confidentiality-guides/).

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## Acknowledgements

The author and the AYAH National Resource Center gratefully acknowledge the careful review of this document and comments provided by several individuals in New Hampshire with expertise in adolescent and young adult health. The author extends special thanks to Charles Irwin, Claire Brindis, and Jane Park of NAHIC, University of California, San Francisco; Kristin Teipel of SAHRC, University of Minnesota; and Iliana White and Caroline Stampfel of AMCHP for their advice and support.

## Support

This publication was supported in part by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS), (cooperative agreement, U45MC27709), as part of an award totaling \$1,350,000. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement by, HRSA, HHS or the U.S. Government.

## Table of Contents

<b>Introduction</b> .....	<b>1</b>
<b>Importance of Protecting Confidentiality</b> .....	<b>1</b>
Rationale for confidentiality .....	2
Research findings about privacy concerns .....	2
Health care professional organizations .....	2
Confidentiality is not absolute .....	3
<b>Emerging Confidentiality Challenges</b> .....	<b>3</b>
<b>New Hampshire Health Care Consent Laws</b> .....	<b>3</b>
Linkage of consent & confidentiality .....	3
<b>Minor Consent Laws in New Hampshire</b> .....	<b>3</b>
<b>Minors in Special Situations</b> .....	<b>4</b>
<b>New Hampshire Confidentiality Laws</b> .....	<b>4</b>
<b>Confidentiality Laws for Minors in New Hampshire</b> .....	<b>4</b>
<b>Federal Confidentiality Laws</b> .....	<b>5</b>
HIPAA Privacy Rule .....	5
FERPA .....	6
Title X Family Planning .....	7
Medicaid .....	7
Drug and Alcohol Programs .....	7
Ryan White HIV/AIDS Program .....	8
Federally Qualified Health Centers .....	8
<b>Confidentiality and Preventive Services</b> .....	<b>8</b>
Recommended preventive services for adolescents & young adults .....	8
<b>Conclusion</b> .....	<b>9</b>
<b>Table 1: New Hampshire Health Care Consent Laws for Minors</b> .....	<b>10</b>
<b>Table 2: New Hampshire &amp; Federal Confidentiality Laws for Minors</b> .....	<b>11</b>
<b>Table 3: New Hampshire &amp; Federal Confidentiality Laws for Young Adults</b> .....	<b>12</b>
<b>Appendix A: New Hampshire Health Care Consent &amp; Confidentiality Laws for Minors</b> .....	<b>13</b>
<b>Appendix B: Federal Confidentiality Laws</b> .....	<b>16</b>
<b>Appendix C: Key Questions for Confidentiality Protection</b> .....	<b>20</b>
<b>Appendix D: Legal Resources for Adolescent &amp; Young Adult Health &amp; the Law in New Hampshire</b> .....	<b>21</b>
<b>Appendix E: Resources on Confidentiality, Health Insurance, and Electronic Health Records</b> .....	<b>22</b>
<b>Appendix F: Consent for Contraception &amp; Pregnancy Care</b> .....	<b>23</b>
<b>Appendix G: 25 Years of AYAH Confidentiality Studies—A Bibliography</b> .....	<b>24</b>
Adolescent and Young Adult Perspectives .....	24
Health Care Provider Perspectives and Availability of Confidential Services .....	26
Parent Perspectives .....	27
<b>References</b> .....	<b>29</b>

# Adolescent & Young Adult Health Care in New Hampshire

## A Guide to Understanding Consent & Confidentiality Laws

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This guide provides a summary of legal consent requirements and confidentiality protections for adolescents and young adults in New Hampshire to inform health care providers and promote access to essential health care including preventive health services.

### INTRODUCTION

Confidentiality protections encourage adolescents and young adults to seek the health care they need and safeguard their privacy when they receive services. The relationship between confidentiality of health information and consent for health care is important. The specific ways the law protects confidentiality depend on whether a patient is a minor or an adult and whether the patient can legally consent to their own care. Some adolescents are minors—under age 18—and some are young adults—age 18 or older.

Young adults almost always may consent to their own care; minors may consent sometimes, but not always. Young adults are entitled to the same confidentiality protections under state and federal laws as other adults.

“Minor consent laws” allow minors to consent for their own care in specific situations and for specific services. Laws authorizing minors to consent and laws protecting confidentiality are closely linked but they do not always match each other. Adolescent minors who consent for their own care are entitled to many confidentiality protections; but these may be qualified or limited in ways that allow for disclosure of some information to parents or others.

Numerous federal and state laws contain confidentiality protections for health information. The interplay of law and ethics also is important in understanding confidentiality in the health care of adolescents and young adults. Careful analysis of the relevant state and federal laws, informed by sound ethical principles, can clarify these issues in New Hampshire as in other states.

### IMPORTANCE OF PROTECTING CONFIDENTIALITY

There are numerous reasons to protect confidentiality for the health care communications and health information of adolescents and young adults. The most compelling is to encourage young people to seek necessary care on a timely basis and to provide a candid and complete health history when they do so. Additional reasons include supporting their developing sense of privacy and autonomy as well as protecting them from the humiliation and discrimination that can result from disclosure of confidential information. Offering confidential care can also help young people develop their capacity to engage independently with the health care system. Decades of research findings have documented the importance of privacy concerns for young people in the adolescent age group; additional research has found similar concerns among young adults. (See Appendix G) Overarching goals of confidentiality protection include promoting both the health of individual young people and the public health. One key element of reaching these goals is ensuring that young people receive the health care services they need.

Privacy concerns influence use of health care in many ways. Many adolescents are concerned about disclosure to their parents of information related to sexual behaviors, substance use, and mental health. This is true even though many adolescents voluntarily share a lot of health information with their parents

and other trusted adults. Voluntary communication can be very helpful in supporting adolescents' and young adults' health; mandated communication and disclosure can be counterproductive unless they are necessary to protect the health of a young person. Specifically, concerns about confidentiality and disclosure can affect whether adolescents seek care,<sup>1,2,3</sup> where they seek care,<sup>4,5</sup> and how openly they talk with health care professionals.<sup>6</sup> Some young adults also hesitate to use certain services unless privacy can be maintained.<sup>7</sup> Concerns that confidentiality will not be protected can lead adolescents and young adults to forego or delay care or to be less than candid when they do see a health care provider. (See Appendix G)

#### Rationale for confidentiality

- Protect health of adolescents & young adults
- Protect public health
- Promote positive health behaviors & outcomes
- Avoid negative health outcomes
- Encourage adolescents & young adults to seek needed care
- Increase open communication with health care providers

#### Research findings about privacy concerns

Privacy concerns affect behavior and influence:

- Whether young people seek care
- When young people seek care
- Where young people seek care
- How openly young people talk with health care providers

The effect of privacy concerns has been especially well documented with respect to adolescents' use of sexual health services, including care related to contraception, pregnancy, and sexually transmitted diseases (STDs). For example, one study found that almost all adolescents would consent to STD testing if their parents would not know, but

only about one third would agree if their parents would or might know.<sup>8</sup> According to another study, nearly one half of adolescents would stop using family planning clinic services if parental notification were mandatory.<sup>9</sup> Yet, a national survey found that only a very small minority of adolescents would stop having sex if parental notification were mandatory for contraceptives, and a significant percentage would have riskier sex.<sup>10</sup>

Health care professional organizations recognize the importance of confidentiality protections in health care. These organizations have adopted codes of ethics and issued policies that address privacy and confidentiality protections for patients generally, including young adults and adolescents.<sup>11</sup> They also have adopted policies related to adolescent health care that address confidentiality for particular health care settings, special populations, and specific services—preventive health care, testing & treatment for STDs & HIV, contraception, pregnancy-related care, and other reproductive health services. These policies often speak to the importance of informing patients, including adolescents and their parents, about confidentiality and its limits.

#### Health care professional organizations

Codes of ethics and policies support:

- Rationale for confidentiality
- Scope of confidentiality and its limits
- Confidentiality in particular health care settings
- Confidentiality for specific populations of adolescents
- Confidential access to specific health services

Confidentiality is not absolute. To understand the scope and limits of legal and ethical confidentiality protections, it is important to clarify: what *may not* be disclosed because it is confidential and none of the exceptions to confidentiality apply; what *may* be disclosed based on the discretion of the health care professional; and what *must* be disclosed because there is another requirement, such as a reporting requirement, that overrides confidentiality.

**Confidentiality is not absolute**

Confidential information must be disclosed:

- To comply with reporting mandates
  - Child abuse
  - Communicable disease
  - Assaults such as knife or gunshot wounds
  - Domestic violence
- When a patient is dangerous to self or others

**Emerging Confidentiality Challenges**

Two sets of issues represent increasing challenges for protecting confidentiality in adolescent and young adult health care. The first set comprises the issues associated with billing and health insurance claims, particularly the use of explanations of benefits (EOBs) to communicate with health insurance policyholders.<sup>12,13</sup> Although the use of EOBs is used virtually universally by commercial health care insurers and health plans, Medicaid agencies generally do not send EOBs. The second evolving issue relates to the complex questions associated with use of and access to electronic health records (EHRs) and web portals.<sup>14,15,16,17</sup> Significant variation exists among provider sites in their implementation of EHRs and their handling of confidentiality for adolescents in the EHR context. In these arenas, laws and policies as well as best practices are evolving rapidly. Thorough discussion of these issues is beyond the scope of this guide, but considering them is essential in any effort to protect confidentiality for adolescents and young adults. (See Appendix E)

**NEW HAMPSHIRE HEALTH CARE CONSENT LAWS**

The age of majority in New Hampshire is 18;<sup>18</sup> anyone younger than age 18 is legally a minor. Young adults age 18 or older are allowed to consent for their own health care; their right to consent may be limited if they are cognitively impaired and unable to give informed consent. For adolescents who are minors, the consent of a parent or another authorized adult is generally required. There are exceptions to this requirement contained in New Hampshire's "minor consent laws." (See Table 1 and Appendix A)

**Minor Consent Laws in New Hampshire**

New Hampshire has several laws either allowing minors to receive certain services without prior parental consent or authorizing them to consent for specific health care services, including some preventive services. In particular, these laws cover emergency care,<sup>19</sup> STD care,<sup>20</sup> HIV testing,<sup>21</sup> treatment for drug dependency or problems related to drug use,<sup>22</sup> and community mental health services.<sup>23</sup> (See Table 1 and Appendix A) New Hampshire law also provides for "expedited partner therapy" or EPT that allows STD prescription to a patient's partner.<sup>24</sup>

**Linkage of consent & confidentiality**

"Consent" & "confidentiality" are not perfectly matched but are closely linked in:

- Clinical practice
- Ethical standards
- Professional policies
- State & federal laws

Although New Hampshire does not have an explicit law authorizing minors to consent for contraception, it also does not have a law prohibiting them from doing so or explicitly requiring parental consent for contraception.

Minors may consent for confidential family planning services funded by Title X or Medicaid; they also should be able to do so in other settings based on the constitutional right of privacy or the mature minor doctrine. (See Tables 1 & 2, Appendix A, and Appendix F). Minors may also access emergency contraception without parental consent.<sup>25</sup> New Hampshire law contains detailed requirements for minors to receive abortion services that require notification of a parent or guardian but include a judicial bypass and an emergency exception.<sup>26</sup> (See Table 1 and Appendix A)

### *Minors in Special Situations*

Some adolescent minors are in special situations or have health care needs that are not clearly addressed by the New Hampshire minor consent laws. These include, for example, adolescents who are victims of sexual assault or human trafficking, or LGBTQ youth. Even though the state's minor consent laws do not explicitly provide for these adolescents to consent for specific services such as care for sexual assault or transgender services, they are able to consent—on the same basis as any other minor—for other services that are covered by the minor consent laws or other laws, such as care for STDs and HIV, contraception, treatment for drug use, and community mental health services. Often these services are relevant to their special situations.

When adolescents are in foster care, special rules may determine who can give consent for their health care—their parents, their social worker, or the court. In New Hampshire, the social service agency has provided guidance to foster parents on the procedures for obtaining authorization for a foster child to receive health care.<sup>27</sup> However, foster children should be able to consent for their own health care on the same basis as other youth.

## **NEW HAMPSHIRE CONFIDENTIALITY LAWS**

New Hampshire laws include protections for the health care information of individuals of all ages, including minor adolescents and young adults.<sup>28,29</sup> New Hampshire laws generally provide confidentiality protection for medical records and patients' health information and usually require consent for release of the records or disclosure of the information subject to certain exceptions. New Hampshire law includes some provisions that parallel the federal HIPAA Privacy Rule for disclosure of protected health information. New Hampshire has specific legal protections for mental health and substance abuse treatment information and records.<sup>30</sup> New Hampshire laws also contain provisions that are specific to the confidentiality of minors' health information. (See Tables 2 & 3 and Appendix A)

### *Confidentiality Laws for Minors in New Hampshire*

Confidentiality protections and consent requirements for minors are closely linked but not perfectly matched. Generally, when minors may consent for their own health care they can expect confidentiality protection, but there are exceptions. The New Hampshire laws that allow minors to consent for STD diagnosis and treatment also specify that they may do so without parental knowledge. New Hampshire also allows but does not require health care providers to share information about a positive HIV test result and mental health services with a minor's parent in specific circumstances. (See Table 2 and Appendix A) Also, confidentiality may be compromised via billing and health insurance claims as well as through access to electronic health records via web portals. (See Appendix E)

One of the main exceptions to confidentiality is the requirement to report child abuse. In New Hampshire, health care professionals, other professionals, and all other individuals who have reason to suspect that a child has been abused are required to report. The New Hampshire definition of reportable abuse includes physical and emotional abuse by a parent or person responsible for the child and sexual abuse by any person.<sup>31,32</sup>

A question that often arises for health care professionals is whether voluntary sexual activity of minor adolescents must be reported as child abuse. This complex question has been carefully addressed elsewhere and is beyond the scope of this guide, but careful attention to the requirements of state reporting laws is always essential.<sup>33</sup> A related concern of health care professionals is the age at which minors can participate in sexual activity without risk of criminal prosecution—sometimes referred to as “age of consent.” This issue is legally separate from the requirement to report child abuse and a detailed discussion also is beyond the scope of this guide.<sup>34</sup>

These New Hampshire laws must be interpreted and applied in the context of the full range of federal laws that protect confidentiality and sometimes supersede state laws. (See Tables 2 & 3 and Appendix B) Important federal confidentiality laws include the HIPAA Privacy Rule, as well as legal requirements for numerous federally funded health programs. Because the HIPAA Privacy Rule defers to state laws and other applicable laws on the question of when parents have access to their adolescent minor children’s health information, understanding the relationship between state and federal laws is essential.

## FEDERAL CONFIDENTIALITY LAWS

Numerous federal laws contain confidentiality protections. These laws protect patients’ privacy in the health care system and the confidentiality of their health information. Federal confidentiality laws that are of particular importance for adolescent and young adult health care include the HIPAA Privacy Rule and FERPA, as well as statutes and regulations for the Title X Family Planning Program and Medicaid, and the rules for drug and alcohol programs. Confidentiality protections can also be found in requirements for other programs such as the Ryan White HIV/AIDS Program and federally qualified health centers (FQHCs). (See Tables 2 & 3 and Appendix B)

### Legal sources of confidentiality protection

- Constitutional right of privacy
- HIPAA Privacy Rule
- Federal education privacy laws
- Federal & state funded health program requirements
- State minor consent laws
- State medical confidentiality & medical records laws
- Evidentiary privileges
- Professional licensing laws

## HIPAA Privacy Rule

The HIPAA Privacy Rule—the federal medical confidentiality regulations issued in 2002 under the Health Insurance Portability and Accountability Act—protects the health care information of adolescents and young adults.<sup>35</sup> The HIPAA privacy protections for young adults are the same as for other adults: they are entitled to access their protected health information and to control the disclosure of that information in some circumstances. Additional specific requirements apply to the information of adolescents who are minors.

When minors are authorized to consent for their own health care and do so, the HIPAA Privacy Rule treats them as “individuals” who are able to exercise rights over their own protected health information (PHI).<sup>36</sup> Also, when parents have acceded to a confidentiality agreement between a minor and a health professional, the minor is considered an “individual” under the Rule.<sup>37</sup>

Generally, the HIPAA Privacy Rule treats parents as the “authorized representative” and gives them access to the health information of their unemancipated minor children, including adolescents. Parents’ access is limited in situations that involve abuse or endangerment or when it would not be in the minor’s best interest.<sup>38</sup> However, when minors are considered “individuals,” their parents are not necessarily their authorized representative. On the issue of when parents may have access to protected health information for minors who are considered “individuals” and who have consented to their own care, the Rule defers to other laws. Parents’ access to their adolescent minor child’s information in these circumstances depends on “state or other law.”<sup>39</sup>

Thus, a health care provider must look to state laws or other laws to determine whether they specifically address the confidentiality or disclosure of a minor’s health information. State or other laws that explicitly require, permit, or prohibit disclosure of information to a parent are controlling.<sup>40</sup> If state or other laws are silent on the question of parents’ access, a health care professional exercising professional judgment has discretion to determine whether or not to grant access.<sup>41</sup> The relevant sources of state or other law that a health care provider must consider include all of the state and federal laws that contain confidentiality protections.

Additional provisions of the HIPAA Privacy Rule that are important for both adolescents and young adults are those that allow individuals to request restrictions on the disclosure of their PHI and to request that communications regarding their PHI occur in a confidential manner.<sup>42</sup> Other protections address situations in which disclosure may be restricted to protect individuals who may be at risk for domestic violence or child abuse.<sup>43</sup>

### **FERPA**

When health care services are provided in a school setting, the legal framework for consent to treatment for adolescents remains generally the same as in other settings; however, different confidentiality rules may apply. In a school setting, the HIPAA Privacy Rule requirements must be understood in relation to the requirements of the Family Educational Rights and Privacy Act (FERPA), a federal statute that, with its implementing regulations, controls the disclosure of the educational records of students at most primary, secondary, and post-secondary schools.<sup>44</sup> Health care professionals who provide services in schools often are uncertain whether they must follow the HIPAA Privacy Rule or FERPA. Two federal agencies—the Department of Health & Human Services and the Department of Education—have issued joint guidance that provides some clarification.<sup>45</sup>

While the HIPAA Privacy Rule typically controls release of health information created by health care professionals, the HIPAA Privacy rule explicitly *excludes* from its purview health records that are part of an “education record” as that is defined under FERPA.<sup>46</sup> FERPA defines “education record” in a way that sometimes can include health records created by a health care provider—such as a school nurse—employed by or acting on behalf of a school or university.

Thus, health records created by medical professionals employed by a school or university may be part of an “education record” and subject to FERPA rather than HIPAA. The most important implication of this is that

parents have access to the education records of their minor children. Young adults, beginning at age 18, control access to their own education records under FERPA, including any health information. Health records created by medical professionals working in a school setting such as a school-based health center but employed by a health entity would usually be covered by HIPAA, not FERPA.<sup>47</sup>

### ***Title X Family Planning***

The confidentiality regulations for the federal Title X Family Planning Program<sup>48</sup> are exceptionally strong and have protected adolescents as well as adults for nearly five decades. Federal Title X confidentiality protections take precedence over state requirements for parental consent or notification, allowing minors to receive family planning services at Title X sites without parental involvement.<sup>49</sup> The regulations require that all information about individuals receiving services must be confidential and must not be disclosed without the individual's documented consent, except as necessary to provide services to the patient or as required by law—and, even then, only with appropriate safeguards for confidentiality.<sup>50</sup> When information is shared by Title X providers with other health care providers, care must be taken to understand the extent to which those other providers are bound by similar confidentiality requirements. Examples of disclosures that are often required by law include mandatory reporting of child abuse to child welfare or law enforcement,<sup>51</sup> intimate partner violence to law enforcement,<sup>52</sup> and STDs to public health authorities.<sup>53</sup> In each of these situations, other specific confidentiality rules may apply.

On March 4, 2019 the U.S. Department of Health and Human Services published a final rule, “Compliance with Statutory Program Integrity Requirements,” that would significantly alter the federal regulations for the Title X Program.<sup>54</sup> This guide does not discuss the changes that would result from implementation of the new rule. Detailed analysis of the rule and updates on its status are available elsewhere.<sup>55</sup> The new rule has been challenged in numerous lawsuits.<sup>56</sup>

### ***Medicaid***

Federal Medicaid law contains safeguards against disclosure of confidential information.<sup>57</sup> It also requires that Medicaid cover family planning “services and supplies” for all Medicaid enrollees of childbearing age, including “minors who can be considered to be sexually active.”<sup>58</sup> These protections have been interpreted to provide significant protection for confidential access to family planning services for minors.<sup>59</sup> State laws and policies also contain varied provisions that help to protect the privacy of Medicaid beneficiaries and their confidential health information. These provisions include both general confidentiality requirements and specific confidentiality protections for information related to family planning services, such as through states’ Medicaid family planning expansions that include coverage for minors as well as young adults.<sup>60</sup>

### ***Drug and Alcohol Programs***

Federal regulations—contained in 42 CFR Part 2 and often referred to as “Part 2” establish special confidentiality protections for substance use records;<sup>61,62</sup> they apply to “substance use disorder programs” that meet certain very broad criteria of being “federally assisted.”<sup>63</sup> The regulations protect both adolescent minors and young adults. When minors are allowed to consent for treatment under state law, they have independent rights under the federal regulations.<sup>64</sup> For those providers and programs that must comply with the federal rules, the regulations impose strict confidentiality requirements that do not allow disclosure without the consent of the

patient except in specific circumstances that pose a substantial threat to the life or physical wellbeing of the patient or another person.<sup>65</sup> To the extent that these federal regulations are more protective of confidentiality, they take precedence over state law; if they are less protective, state law controls.<sup>66</sup>

### ***Ryan White HIV/AIDS Program***

The Ryan White HIV/AIDS Program (Ryan White) supports some medical services for patients with HIV.<sup>67</sup> Ryan White generally is a payer of last resort and fills the gaps for individuals with HIV who have no other source of coverage or face coverage limits. Ryan White service providers and patients have significant concerns about confidentiality, but like other federal funding programs such as Title X, the Ryan White law includes strong and explicit confidentiality protections.<sup>68</sup>

### ***Federally Qualified Health Centers***

Federally qualified health centers (FQHCs) funded under Section 330 of the Public Health Service Act,<sup>69</sup> also frequently referred to as “community health centers,” often provide services for adolescents and young adults. For example, some FQHCs operate school-based health centers. FQHCs also are required to provide preventive health services, including voluntary family planning services and many of the preventive services recommended for adolescents and young adults;<sup>70</sup> and some FQHCs receive Title X funds to help provide family planning services. FQHCs are required to maintain the confidentiality of patient records<sup>71</sup> and, if they receive Title X Family Planning funds, to comply with Title X confidentiality regulations. The confidentiality regulation for FQHCs<sup>72</sup> contains language almost identical to the Title X confidentiality regulations.<sup>73</sup>

## **CONFIDENTIALITY AND PREVENTIVE SERVICES**

### **Recommended preventive services for adolescents & young adults**

The U.S. Preventive Services Task Force (USPSTF) and Bright Futures have recommended clinical preventive services for adolescents and young adults in each of these categories:

- substance use
- sexual and reproductive health
- mental health
- nutrition and exercise
- immunizations
- safety and violence

In each category, the specific services recommended by the USPSTF vary for adolescents and for young adults; in Bright Futures the recommendations are for ages 11-21. The AYAH National Resource Center has issued a fact sheet on “[Evidence-Based Clinical Preventive Services for Adolescents and Young Adults](#)” that sets out the specific services recommended for the different age groups in each category.<sup>74</sup>

Many of the preventive services recommended for adolescents and young adults fall into categories about which young people have privacy concerns. These include at least some services in all recommended areas of prevention. Sometimes the privacy concerns are associated with a visit for a specific purpose, such as family planning; on other occasions concerns about confidentiality arise when sensitive issues, such as STDs, HIV, or substance use, are addressed during a well visit.

Not all preventive services raise heightened privacy concerns for adolescents and young adults; but when they do, it is important to understand when confidentiality can—and when it cannot—be assured. For young adults, who are able to consent to their own care and are entitled to the same confidentiality protections as other adults, any preventive health service they receive should be treated as confidential, meaning that information usually should not be disclosed to parents or others without their permission. For minor adolescents, if they are allowed to consent for their own care under the New Hampshire minor consent laws, they can usually expect confidentiality, subject to any disclosures that are specifically permitted or required by law. For both adolescents and young adults, other legal and ethical disclosure obligations, such as when a patient is dangerous to self or others, must be considered. There are no specific confidentiality requirements for preventive services; the extent of confidentiality protection depends on the service as well as the age and other characteristics of the young person.

## CONCLUSION

Confidentiality in adolescent and young adult health care is an important element in protecting the health of individual young people and the public health. Decades of research have found that privacy protection encourages young people to seek essential health care and speak openly with their health care providers. Many state and federal laws as well as ethical guidelines require confidentiality protection and support the rights of adolescents and young adults to receive confidential health care including many preventive health services.

**TABLE 1: NEW HAMPSHIRE HEALTH CARE CONSENT LAWS FOR MINORS\***

New Hampshire Minor Consent Laws Based on Status			
Status	Minor Consent	Scope/Limitations	Citations
Age of majority†	< 18 – No, with exceptions ≥ 18 – Yes	Age of majority is 18	N.H. Rev. Stat. Ann. § 21:44
New Hampshire Minor Consent Laws Based on Services			
Service	Minor Consent	Scope/Limitations	Citations
Emergency services	Yes, with limitations	Emergency medical care provider or a health professional may render emergency medical services to any person, regardless of age, where person is unable to give consent for any reason, including minority status, no other person is reasonably available who is legally authorized to consent for the care, & the provider has acted in good faith	N.H. Rev. Stat. Ann. § 153-A:18
Contraceptives/family planning	Maybe	Minors may consent to family planning services funded by Title X or Medicaid; may be able to do so in other settings based on the mature minor rule or the constitutional right of privacy (Note: See Table 2 re Title X Family Planning & Medicaid)	See Appendix F
Pregnancy care	Maybe	Minor who is capable of giving informed consent minor may be able to consent	See Appendix F
Abortion	No, with exceptions	Notification of one parent or a legal guardian is required; the law includes a judicial bypass and an emergency exception	N.H. Rev. Stat. §§ RSA 132:32 – 132:36
STD diagnosis & treatment	Yes	Minor age 14 or older may voluntarily consent for medical diagnosis and treatment for sexually transmitted diseases, and a licensed physician may diagnose, treat or prescribe for the treatment of sexually transmitted diseases in a minor age 14 or older without the knowledge or consent of the parent or guardian. (Note: See Table 2 re Title X Family Planning)	N.H. Rev. Stat. Ann. § 141-C:18
HIV testing	Yes	Consent of person tested for HIV is required except in specified circumstances	N.H. Rev. Stat. Ann. § 141-F:5
Mental health - outpatient	Yes, with limitations	“Any person” may apply to approved community mental health program to receive services from the state mental health services system; application also may be made by a minor’s parent or guardian	N.H. Rev. Stat. Ann. § 135-C:12
Drug use or dependency	Yes	Minor age 12 or older may consent to treatment for drug dependency or any problem related to the use of drugs without the consent of a parent or legal guardian	N.H. Rev. Stat. Ann. § 318-B:12-a

\* This table contains only brief summary information about the laws; more detailed information and selected excerpts of the laws are contained in Appendix A.

† Parent consent is generally required for minors under age 18 unless one of the exceptions in the minor consent laws apply; young adults age 18 or older generally may consent for themselves.

**TABLE 2: NEW HAMPSHIRE & FEDERAL CONFIDENTIALITY LAWS FOR MINORS\***

<b>New Hampshire Confidentiality Laws for Minors†</b>		
	<b>Scope of Protection/Limitations</b>	<b>Citations</b>
STD diagnosis & treatment	Physician may diagnose, treat or prescribe for treatment of sexually transmitted diseases in a minor age 14 or older without knowledge or consent of parent or guardian	N.H. Rev. Stat. Ann. § 141-C:18
HIV test results	HIV test results shall be disclosed to the person who was tested. Such person shall be provided with appropriate counseling at the time of notification; if person with HIV positive test result is under age 18, the physician or person authorized by physician may disclose test results to a parent or legal guardian	N.H. Rev. Stat. Ann. § 141-F:7
Mental health information – disclosure to family member	Treatment information regarding seriously or chronically mentally ill person receiving services from community mental health program or state facility may be disclosed to a family member who lives with the person or provides direct care after the facility has received the written consent of the patient or, if consent cannot be obtained, has notified the patient in writing as to what is being disclosed, the reason for its disclosure, and to whom	N.H. Rev. Stat. Ann. § 135-C:19-a
Child abuse reporting	Health care providers, other professionals, & other persons who have reason to believe that a child has been abused or neglected must report; the definition of reportable abuse includes physical injury, psychological injury, & sexual abuse	N.H. Rev. Stat. Ann § 169-C:3; N.H. Rev. Stat. Ann. § 169-C:29
<b>Federal Confidentiality Laws for Minors</b>		
	<b>Scope of Protection/Limitations</b>	<b>Citations</b>
HIPAA Privacy Rule – minor as individual	A minor who consents, or whose parent accedes to confidentiality, is an “individual” with control over their own protected health information (PHI)	45 C.F.R. § 164.502(g)(3)
HIPAA Privacy Rule – parent as personal representative	Parents are not necessarily the personal representative when minors have consented to their own care; parent may not be personal representative if minor subject to domestic violence, abuse, neglect, or endangerment	45 C.F.R. § 164.502(g)(3) and (5)
HIPAA Privacy Rule – parents’ access	Parents’ access to PHI when minor is the “individual” depends on other state and federal laws; parents’ access may be denied if health care professional determines it would cause substantial harm to minor or another individual	45 C.F.R. §§ 164.502(g)(3), 164.524(a)(3)(iii)
FERPA	Information about health services provided by a school may be included in a students’ “education records” and subject to FERPA, not HIPAA; parents have access to minors’ education records	20 U.S.C §1232g, 34 C.F.R. Part 99; 45 C.F.R. § 160.103
Title X Family Planning	Information about family planning services received at Title X funded sites is confidential and may only be disclosed with the minor’s permission or if required by law	42 C.F.R. § 59.11
Medicaid	Adolescent minors who are eligible for Medicaid may receive confidential family planning services funded by Medicaid	42 U.S.C. §§ 1396a(a)(7), 1396d(a)(4)(C)
Drug & alcohol— “substance use disorder”— programs	In federally assisted programs, consent for disclosure must be obtained from minor who is authorized under state law to consent for alcohol or drug abuse treatment; disclosure to parents may occur only if minor lacks capacity for rational choice due to extreme youth, physical incapacity, or substantial threat to minor or another	42 C.F.R. § 2.14

\* This table includes information about selected state and federal confidentiality laws that pertain to minors’ health information. It contains only brief summary information about the laws; more detailed information about some of the laws is included in Appendix A and Appendix B.

† For additional confidentiality laws related to both minors and young adults, see Table 3.

**TABLE 3: NEW HAMPSHIRE & FEDERAL CONFIDENTIALITY LAWS FOR YOUNG ADULTS\***

<b>New Hampshire Confidentiality Laws for Young Adults†</b>		
	<b>Scope of Protection/Limitations</b>	<b>Citations</b>
Medical records - access	All medical information in records of health care provider are property of patient; patients have a right to access their medical records	N.H. Rev. Stat. Ann. §332-I:1
Medical information - disclosure	Health care provider shall not reveal confidential communications or information without the consent of the patient, unless provided for by law or by the need to protect the welfare of the individual or the public interest	N.H. Rev. Stat. Ann. §332-I:2
Mental health information – disclosure to family member	Treatment information regarding seriously or chronically mentally ill person receiving services from a community mental health program or state facility may be disclosed to family member who lives with person or provides direct care with written consent of patient or, if consent cannot be obtained, notice to patient in writing as to what is being disclosed, reason for disclosure, & to whom	N.H. Rev. Stat. Ann. § 135-C:19-a
Duty to warn	Physicians, mental health professionals, substance use professionals, & nurses have a duty to warn or take reasonable precautions to provide protection when client has communicated serious threat of physical violence against clearly identified or reasonably identifiable victim or victims or serious threat of substantial damage to real property	N.H. Rev. Stat. Ann. § 329:31 N.H. Rev. Stat. Ann. § 329-B:29 N.H. Rev. Stat. Ann. § 330-A:35 N.H. Rev. Stat. Ann. § 330-C:25
Substance abuse records - disclosure	Substance abuse treatment records & information may only be disclosed with consent of patient subject to certain exceptions	N.H. Rev. Stat. Ann. § 172:8-a
HIV	Identity & records of person tested for HIV are confidential and shall not be disclosed subject to certain exceptions	N.H. Rev. Stat. Ann. §§ 141-F:7, 141-F:8
<b>Federal Confidentiality Laws for Young Adults</b>		
	<b>Scope of Protection/Limitations</b>	<b>Citations</b>
HIPAA Privacy Rule - generally	Individuals have access to and some control over disclosure of their own protected health information (PHI)	45 C.F.R. §§ 502, 524, 528
HIPAA Privacy Rule – special confidentiality protections	Individuals may request restrictions on the disclosure of their PHI and that communications regarding their PHI occur in a confidential manner	45 C.F.R. §§ 164.502(h), 164.522(a)(1), and 164.522(b)(1)
FERPA	Information about health services provided by a school may be included in a students’ “education records” and subject to FERPA, not HIPAA; parents do not have access to education records of young adults age 18 and older	20 U.S.C §1232g, 34 C.F.R. Part 99; 45 C.F.R. § 160.103
Title X Family Planning	Information about family planning services received at Title X funded sites is confidential & may only be disclosed with the patient’s permission or if required by law	42 C.F.R. § 59.11
Medicaid	State Medicaid plans are required to include protections for confidentiality of applicants’ & enrollees’ information	42 U.S.C. § 1396a(a)(7)
Drug & alcohol—“substance use disorder”—programs	Consent for disclosure must be obtained from an individual who seeks treatment from a substance use disorder provider or program; disclosure without the patient’s consent may occur only in very limited circumstances such as bona fide medical emergencies or with a court order	42 C.F.R. Part 2

\* This table includes information about selected state and federal confidentiality laws that pertain to young adults’ health information. It contains only brief summary information about the laws; more detailed information about some of the federal laws is included in Appendix B.

† The laws in this section are relevant to both minors and young adults.

## **APPENDIX A: NEW HAMPSHIRE HEALTH CARE CONSENT & CONFIDENTIALITY LAWS FOR MINORS**

This appendix contains brief summaries of New Hampshire consent and confidentiality laws that apply to health care services received by minors.

### ***Minor Consent Based on Status***

#### **Age of Majority**

*N.H. Rev. Stat. Ann. § 21:44*

The age of majority is 18.

### ***Minor Consent Based on Services***

#### **Emergency Services**

*N.H. Rev. Stat. Ann. § 153-A:18*

A licensed emergency medical care provider or any health professional is not subject to civil liability for failure to obtain consent in rendering emergency medical services to any person, regardless of age, where the person is unable to give consent for any reason, including minority status, and there is no other person reasonably available who is legally authorized to consent for the care, and the provider has acted in good faith knowledge of facts negating consent.

#### **Contraception/Family Planning**

Note: Although New Hampshire does not have an explicit statute authorizing minors to consent for contraception or family planning services, they may do so for services funded by Title X or Medicaid. (See Appendix B) Minors also may be able to do so based on the mature minor doctrine or the constitutional right of privacy. (See Appendix F)

Note: Under FDA rules for emergency contraception, Plan B and its generic equivalents are available “over the counter” without a prescription for individuals of any age; Ella is available with a prescription.<sup>75</sup>

#### **Pregnancy Related Care**

Note: Although New Hampshire does not have an explicit statute authorizing minors to consent for pregnancy-related care—such as prenatal care, delivery, and postnatal care—they may be able to do so if they are able to give informed consent. (See Appendix F)

## **Abortion**

*N.H. Rev. Stat. §§ RSA 132:32 – 132:36*

This statute provides that an abortion shall not be performed upon an unemancipated minor until after written notice has been delivered to a parent or legal guardian of the minor. The law includes a judicial bypass and an emergency exception. Note: A prior law, *N.H. Rev. Stat. Ann. §§ 132:24-:28*, was declared unconstitutional in *Planned Parenthood of N. New Eng. v. Heed*, 269 F. Supp. 2d 59 (D.N.H. 2003), affirmed *390 F.3d 53* (2004), vacated and remanded in *Ayotte v. Planned Parenthood*, 546 US 320 (2006). The Act was repealed in 2007. The current law was enacted in 2010 and took effect in 2012.

## **STD Care**

*N.H. Rev. Stat. Ann. § 141-C:18*

Any minor age 14 or older may voluntarily consent for medical diagnosis and treatment for sexually transmitted diseases, and a licensed physician may diagnose, treat or prescribe for the treatment of sexually transmitted diseases in a minor age 14 or older without the knowledge or consent of the parent or guardian.

## **HIV/AIDS Care**

*N.H. Rev. Stat. Ann. § 141-F:5*

No health care provider may test for HIV unless the person being tested consents after being informed about the medical interpretations of test findings, or the test is to verify the safety of donated body fluids or organs, the test is for research, the subject is confined to a correctional facility, or the subject is incapable of informed consent and the test is necessary to protect the person's health. No specific legal provision was found expressly authorizing minors to consent for treatment for HIV or AIDS.

## **Drug/Alcohol Care**

*N.H. Rev. Stat. Ann. § 318-B:12*

Any minor age 12 or older may voluntarily submit himself or herself to treatment for drug dependency or any problem related to the use of drugs without the consent of a parent or legal guardian. A minor who is of sufficient maturity to understand the nature of the treatment shall not be considered legally incapable of consenting for medical treatment provided that such minor is of sufficient maturity to understand the nature of such treatment and the consequences thereof. A parent or legal guardian is not liable for payment for services under this section.

## **Mental Health Services**

*N.H. Rev. Stat. Ann. § 135-C:12*

“Any person” may apply to an approved community mental health program to receive services from the state mental health services system; the application also may be made by a minor’s parent or guardian.

## **Confidentiality & Disclosure**

### **Disclosure to Parents**

*N.H. Rev. Stat. Ann. § 141-C:18*

Any minor age 14 or older may receive voluntary treatment for sexually transmitted diseases without the knowledge of the parent or guardian.

*N.H. Rev. Stat. Ann. § 141-F:7*

HIV test results shall be disclosed by the physician or the person authorized by the physician to the person who was tested. Such person shall be provided with appropriate counseling at the time of notification. If the person with an HIV positive test result is under age 18, the physician or the person authorized by the physician may disclose the test results to a parent or legal guardian. In such cases, the parent or legal guardian shall be entitled to appropriate counseling.

*N.H. Rev. Stat. Ann. § 135-C:19*

Treatment information regarding a seriously or chronically mentally ill person receiving services from a community mental health program or state facility, may be disclosed to a family member who lives with the person or provides direct care, after the facility has received the written consent of the patient or, if consent cannot be obtained, has notified the patient in writing as to what is being disclosed, the reason for its disclosure, and to whom.

## **Child Abuse Reporting**

### **Definitions**

*N.H. Rev. Stat. Ann. § 169-C:29(II)*

“Abused child” means any child who has been sexually abused, intentionally physically injured, psychologically injured so that the child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect, or physically injured by other than accidental means.

*N.H. Rev. Stat. Ann. § 169-C:29(XXVII-b)*

“Sexual abuse” means the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of such conduct for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term “child” or “children” means any individual who is under the age of 18 years.

### **Mandated Reporting**

*N.H. Rev. Stat. Ann. § 169-C:29*

Any physician, surgeon, county medical examiner, psychiatrist, resident, intern, dentist, osteopath, optometrist, chiropractor, psychologist, therapist, registered nurse, hospital personnel (engaged in admission, examination, care and treatment of persons), Christian Science practitioner, teacher, school official, school nurse, school counselor, social worker, day care worker, any other child or foster care worker, law enforcement official, priest, minister, or rabbi or any other person having reason to suspect that a child has been abused or neglected is required to report.

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## APPENDIX B: FEDERAL CONFIDENTIALITY LAWS

This appendix contains brief summaries and excerpts of the text of selected federal statutes and regulations that provide confidentiality protection for health information and services provided to adolescent minors and young adults.

### *HIPAA Privacy Rule*

The HIPAA Privacy Rule contains protections for both minors and young adults. In 45 C.F.R. § 160.502(g)(3) the rule specifies when a minor is considered an individual who has rights with respect to their own protected health information PHI and whose parent is not necessarily their personal representative with access to their PHI. In 45 C.F.R. § 160.502(g)(5) the rule specifies when a parent is not necessarily the personal representative of a minor due to abuse, neglect, domestic violence, or endangerment, or if it would not be in the minor's best interest. In 45 C.F.R. §§ 160.502(h) and 160.522 the rule specifies special confidentiality protections for individuals: the right to request restrictions on disclosure of PHI; and the right to request confidential communications.

#### **45 C.F. R. § 160.502. Uses and disclosures of protected health information: general rules.**

“ . . . (g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(3)(i) Implementation specification: unemancipated minors. If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:

(A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;

(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or

(C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; and

(C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under § 164.524 to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

...

(5) Implementation specification: Abuse, neglect, endangerment situations. Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if:

(i) The covered entity has a reasonable belief that:

(A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

(B) Treating such person as the personal representative could endanger the individual; and

(ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(h) Standard: Confidential communications. A covered health care provider or health plan must comply with the applicable requirements of § 164.522(b) in communicating protected health information.

...”

#### **45 C.F.R. § 164.522 Rights to request privacy protection for protected health information**

“(a)(1) Standard: Right of an individual to request restriction of uses and disclosures. (i) A covered entity must permit an individual to request that the covered entity restrict:

(A) Uses or disclosures of protected health information about the individual to carry out treatment, payment, or health care operations; and

(B) Disclosures permitted under § 164.510(b).

(ii) Except as provided in paragraph (a)(1)(vi) of this section, a covered entity is not required to agree to a restriction.

(iii) A covered entity that agrees to a restriction under paragraph (a)(1)(i) of this section may not use or disclose protected health information in violation of such restriction, except that, if the individual who requested the restriction is in need of emergency treatment and the restricted protected health information is needed to provide the emergency treatment, the covered entity may use the restricted protected health information, or may disclose such information to a health care provider, to provide such treatment to the individual.

(iv) If restricted protected health information is disclosed to a health care provider for emergency treatment under paragraph (a)(1)(iii) of this section, the covered entity must request that such health care provider not further use or disclose the information.

(v) A restriction agreed to by a covered entity under paragraph (a) of this section, is not effective under this subpart to prevent uses or disclosures permitted or required under §§ 164.502(a)(2)(ii), 164.510(a) or 164.512.

(vi) A covered entity must agree to the request of an individual to restrict disclosure of protected health information about the individual to a health plan if:

(A) The disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law; and

(B) The protected health information pertains solely to a health care item or service for which the individual, or person other than the health plan on behalf of the individual, has paid the covered entity in full.

(2) Implementation specifications: Terminating a restriction. A covered entity may terminate a restriction, if:

- (i) The individual agrees to or requests the termination in writing;
- (ii) The individual orally agrees to the termination and the oral agreement is documented; or
- (iii) The covered entity informs the individual that it is terminating its agreement to a restriction, except that such termination is:

(A) Not effective for protected health information restricted under paragraph (a)(1)(vi) of this section; and  
(B) Only effective with respect to protected health information created or received after it has so informed the individual.

(3) Implementation specification: Documentation. A covered entity must document a restriction in accordance with § 160.530(j) of this subchapter.

(b)(1) Standard: Confidential communications requirements. (i) A covered health care provider must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the covered health care provider by alternative means or at alternative locations.

(ii) A health plan must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the health plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.

(2) Implementation specifications: Conditions on providing confidential communications.

(i) A covered entity may require the individual to make a request for a confidential communication described in paragraph (b)(1) of this section in writing.

(ii) A covered entity may condition the provision of a reasonable accommodation on:

(A) When appropriate, information as to how payment, if any, will be handled; and

(B) Specification of an alternative address or other method of contact.

(iii) A covered health care provider may not require an explanation from the individual as to the basis for the request as a condition of providing communications on a confidential basis.

(iv) A health plan may require that a request contain a statement that disclosure of all or part of the information to which the request pertains could endanger the individual.”

### ***Title X Family Planning Services***

#### **42 C.F.R. § 59.11 – Confidentiality**

“All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.”\*

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\* On March 4, 2019 the U.S. Department of Health and Human Services published a final rule, “Compliance with Statutory Program Integrity Requirements,” that would significantly alter the federal regulations for the Title X Program.\* This guide does not discuss the changes that would result from implementation of the new rule. Detailed analysis of the rule and updates on its status are available elsewhere. The new rule has been challenged in numerous lawsuits.

### *Medicaid*

#### **42 U.S.C. § 1396a(a)(7)**

State Medicaid plans are required to provide “safeguards for confidentiality for information concerning applicants and recipients.” [Note: The section contains additional specific requirements and exceptions.]

#### **42 U.S.C. § 1396d(a)(4)(C)**

For purposes of the Medicaid program, this [title \[42 USCS §§ 1396 et seq.\]](#)--

“(a) Medical assistance. The term "medical assistance" means payment of part or all of the cost of the following care and services . . . (4) . . . (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of childbearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies[.]”

### *Drug & Alcohol Programs*

#### **42 C.F.R. § 2.14. Minor patients**

“(a) State law not requiring parental consent to treatment. If a minor patient acting alone has the legal capacity under the applicable state law to apply for and obtain substance use disorder treatment, any written consent for disclosure authorized under subpart C of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a part 2 program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a state or local law requiring the program to furnish the service irrespective of ability to pay.

(b) State law requiring parental consent to treatment.

(1) Where state law requires consent of a parent, guardian, or other individual for a minor to obtain treatment for a substance use disorder, any written consent for disclosure authorized under subpart C of this part must be given by both the minor and their parent, guardian, or other individual authorized under state law to act in the minor's behalf.

(2) Where state law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other individual authorized under state law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with subpart C of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the part 2 program director under paragraph (c) of this section.

(c) Minor applicant for services lacks capacity for rational choice. Facts relevant to reducing a substantial threat to the life or physical well-being of the minor applicant or any other individual may be disclosed to the parent, guardian, or other individual authorized under state law to act in the minor's behalf if the part 2 program director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under subpart C of this part to their parent, guardian, or other individual authorized under state law to act in the minor's behalf; and

(2) The minor applicant's situation poses a substantial threat to the life or physical well-being of the minor applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other individual authorized under state law to act in the minor's behalf.”

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## APPENDIX C: KEY QUESTIONS FOR CONFIDENTIALITY PROTECTION

This appendix contains questions that are important to consider in order to determine whether an individual young person in New Hampshire can obtain a particular service confidentially. These questions are based on the New Hampshire and federal laws that establish consent requirements and confidentiality protections for adolescent and young adult health services. Depending on the specific situation additional considerations, and laws not discussed in this guide, may affect whether the young person may receive confidential services.

- Is the youth an adult or a minor?
  - Young adults are generally able to consent for their own care and are entitled to the same confidentiality protections as other adults.
  - Minor adolescents may be able to consent for their own care based their status or the services they are seeking; confidentiality protection may depend on whether they can consent for their own care, the specific service they receive, where they receive the service, and the source of the payment.
  
- If the young person is a minor, what service is the young person seeking?
  - Emergency services
  - Contraception
  - Pregnancy care
  - STD services
  - HIV/AIDS services
  - Mental health services
  - Substance use/abuse services
  - Immunizations
  
- Where is the service being provided?
  - General medical office, health center, or hospital outpatient clinic
  - Title X family planning health center
  - Substance use disorder treatment program
  
- What is the source of the payment?
  - Private/commercial health insurance
  - Self-pay
  - Parent payment
  - Medicaid
  - Title X Family Planning Program
  - New Hampshire state funding
  - Other

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## APPENDIX D: LEGAL RESOURCES FOR ADOLESCENT & YOUNG ADULT HEALTH & THE LAW IN NEW HAMPSHIRE

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New Hampshire Privacy Laws Relating to Behavioral Health Care & Treatment of Minors. Jan. 1, 2016. <https://www.citizenshealthinitiative.org/sites/default/files/media/Summary%20of%20NH%20Behavioral%20Health%20Privacy%20and%20Minor%20Consent%20Laws%2009122016%20.pdf>.

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U.S. Dep't of Health & Human Services, U.S. Dep't of Education. Joint Guidance on the Application of the Federal Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 to Student Health Records. November 2008. <https://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>.

## **APPENDIX E: RESOURCES ON CONFIDENTIALITY, HEALTH INSURANCE, AND ELECTRONIC HEALTH RECORDS**

### Confidentiality & Insurance

Extensive resources on confidentiality and insurance were developed by the National Family Planning & Reproductive Health Association as part of a three-year research project, Confidential & Covered. These resources are available on the project's website at <https://www.confidentialandcovered.com/>. The following publications on that website specifically address legal and policy issues related to confidentiality and insurance:

English A, Summers R, Lewis J, Coleman C. Confidentiality, Third-Party Billing, & the Health Insurance Claims Process: Implications for Title X (2015)

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## APPENDIX F: CONSENT FOR CONTRACEPTION & PREGNANCY CARE

New Hampshire does not have an explicit law authorizing minors to consent for contraception or pregnancy related care such as prenatal care, delivery, and postnatal care. However, no New Hampshire statute, regulation, or court decision specifically prohibits a minor from consenting to these services or explicitly requires parental consent when minors receive these services. In the absence of such a law, it would be reasonable to conclude that minors who have the capacity to give informed consent may receive contraceptive services and pregnancy related care based on their own consent. New Hampshire law does require notification of one parent for a minor to receive an abortion, but the law includes a waiver allowing for a judicial bypass and an emergency exception.<sup>76</sup>

The federal Title X Family Planning Program requires that family planning services, including contraceptive services, be offered to adolescents; family participation must be encouraged but is not required.<sup>77</sup> Title X funded services, including services for adolescents, must be confidential.<sup>78</sup>

Federal Medicaid law contains safeguards against disclosure of confidential information.<sup>79</sup> It also requires that Medicaid cover family planning “services and supplies” for all Medicaid enrollees of childbearing age, including “minors who can be considered to be sexually active.”<sup>80</sup> These protections have been interpreted to provide significant protection for confidential access to family planning services for minors.<sup>81</sup>

An additional source of possible support for allowing minors to consent for contraceptive services and pregnancy related care is the “mature minor” doctrine. The mature minor doctrine was developed in court decisions and is part of the common law. Under the mature minor doctrine, courts in some states have determined that a medical practitioner should not be held liable solely on the basis of failure to obtain parental consent when non-negligent care that is not high risk, is within the mainstream of established medical opinion, and is for the minor’s benefit, is provided to a mature minor.<sup>82</sup> A mature minor is generally considered to be an older adolescent who is capable of giving informed consent (i.e., the patient is able to understand the risks and benefits of any proposed treatment or procedure and its alternatives and is able to make a voluntary choice among the alternatives). In New Hampshire, a state law that authorizes minors to consent for treatment related to drug use or dependency also contains the following language: “Nothing contained herein shall be construed to mean that any minor of sound mind is legally incapable of consenting to medical treatment provided that such minor is of sufficient maturity to understand the nature of such treatment and the consequences thereof.”<sup>83</sup> Lawyers, psychologists, and physicians do not always agree about the validity and application of the mature minor doctrine. Nevertheless, a strong rationale has been articulated that recognition of a mature minor’s capacity to make medical decisions is consistent with research on adolescent development.<sup>84</sup>

The constitutional right of privacy also supports minors’ access to contraceptive services. The right of privacy protects the decision to use contraceptives by both married and unmarried individuals;<sup>85</sup> and the right of privacy with respect to decisions about procreation has been extended to minors as well as adults.<sup>86</sup> In *Carey v. Population Services International*, the U.S. Supreme Court recognized that minors’ constitutional right of privacy encompasses access to contraceptives.<sup>87</sup> In other cases, federal courts have held that minors have constitutional privacy interests<sup>88</sup> and that providing contraception information and services to minor children does not violate the rights of their parents.<sup>89</sup>

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## APPENDIX G: 25 YEARS OF AYAH CONFIDENTIALITY STUDIES—A BIBLIOGRAPHY

This appendix lists selected articles from the past 25 years that form an important part of the evidence base of research findings supporting confidentiality in adolescent and young adult health care.\*

### *Adolescent and Young Adult Perspectives*

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\* Special thanks are extended to Carol A. Ford, MD, of Children's Hospital of Philadelphia and to Justine Po of USCF for their assistance in developing this appendix.

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- <sup>38</sup> 45 C.F.R. § 164.502(g)(5).
- <sup>39</sup> 45 C.F.R. § 164.502(g)(3)(ii).
- <sup>40</sup> 45 C.F.R. § 164.502(g)(3)(ii)(A) and (B).
- <sup>41</sup> 45 C.F.R. § 164.502(g)(3)(ii)(C).
- <sup>42</sup> 45 C.F.R. §§ 164.502(h), 164.522(a)(1), and 164.522(b)(1).
- <sup>43</sup> 45 C.F.R. § 164.512(c).
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- <sup>45</sup> U.S. Dep’t Health & Human Services, U.S. Dep’t of Education. Joint Guidance on the Application of the Federal Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 to Student Health Records. November 2008. <https://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>.
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- <sup>57</sup> 42 U.S.C. § 1396a(a)(7).
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<sup>59</sup> E.g., *Doe v. Pickett*, 480 F. Supp. 1218 (S.D.W.Va. 1979); *Planned Parenthood Association v. Matheson*, 582 F. Supp. 1001 (D.C. Utah 1983); *County of St. Charles v. Missouri Family Health Council*, 107 F.3d 682 (8<sup>th</sup> Cir. 1997), rehearing denied (8<sup>th</sup> Cir. 1997), cert. denied 522 U.S. 859 (1997).

<sup>60</sup> Guttmacher Institute, *State Medicaid Family Planning Eligibility Expansions*, December 2018. <https://www.guttmacher.org/print/state-policy/explore/medicaid-family-planning-eligibility-expansions>.

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<sup>62</sup> Legal Action Center. *Substance Use: Confidentiality Resources*. <https://lac.org/resources/substance-use-resources/confidentiality-resources/>.

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<sup>65</sup> 42 C.F.R. § 2.13.

<sup>66</sup> 42 C.F.R. § 2.20.

<sup>67</sup> 42 U.S.C. §§ 300ff et seq.

<sup>68</sup> 42 U.S.C. §§ 300ff-61, 300ff-62.

<sup>69</sup> 42 U.S.C. §§ 254b et seq.

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<sup>72</sup> 42 C.F.R. § 51c.110.

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<sup>74</sup> AYAH Resource Center. *Evidence-Based Clinical Preventive Services for Adolescents & Young Adults*. [http://nahic.ucsf.edu/wp-content/uploads/2016/03/March-2016\\_AYAHNRC\\_evidence.V3.pdf](http://nahic.ucsf.edu/wp-content/uploads/2016/03/March-2016_AYAHNRC_evidence.V3.pdf).

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<sup>76</sup> N.H. Rev. Stat. §§ RSA 132:32 – 132:36.

<sup>77</sup> 42 U.S.C. § 300(a) (as amended); *Planned Parenthood Federation of America v. Heckler*, 712 F.2d 650 (D.C. Cir. 1983).

<sup>78</sup> 42 C.F.R. § 59.5(a)(1). see also 42 C.F.R. § 59.2 (“unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources”).

<sup>79</sup> 42 U.S.C. § 1396a(a)(7).

<sup>80</sup> 42 U.S.C. § 1396d(a)(4)(C).

<sup>81</sup> E.g., *Doe v. Pickett*, 480 F. Supp. 1218 (S.D.W.Va. 1979); *Planned Parenthood Association v. Matheson*, 582 F. Supp. 1001 (D.C. Utah 1983); *County of St. Charles v. Missouri Family Health Council*, 107 F.3d 682 (8<sup>th</sup> Cir. 1997), rehearing denied (8<sup>th</sup> Cir. 1997), cert. denied 522 U.S. 859 (1997).

<sup>82</sup> E.g., *Cardwell v. Bechtol*, 724 S.W.2d 739 (Tenn., 1987); *Younts v. St. Francis Hospital*, 469 P.2d 330 (Kan., 1970).

<sup>83</sup> N.H. Rev. Stat. Ann. § 318-B:12-a.

<sup>84</sup> Steinberg L. Does recent research on adolescent brain development inform the mature minor doctrine? *J Med Philos.* 2013 Jun;38(3):256-67. doi: 10.1093/jmp/jht017. Epub 2013 Apr 21.

<sup>85</sup> E.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

<sup>86</sup> *Planned Parenthood of Missouri v. Danforth*, 423 U.S. 1071 (1976); *Bellotti v. Baird*, 443 U.S. 622 (1979).

<sup>87</sup> *Carey v. Population Services International*, 431 U.S. 678 (1977).

<sup>88</sup> *Aid for Women v. Foulston*, 441 F.3d 1101 (10<sup>th</sup> Cir. 2006).

<sup>89</sup> *Doe v. Irwin*, 615 F.2d 1162 (6<sup>th</sup> Cir. 1980).



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