Adolescent & Young Adult Health Care in New Jersey

A Guide to Understanding Consent & Confidentiality Laws

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Contributors

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Adolescent & Young Adult Health National Resource Center

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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.

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Adolescent & Young Adult Health Care in New Jersey
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 Jersey 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 Jersey 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. 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,[1,2,3] where they seek care,[4,5] and how openly they talk with health care professionals.[6] Some young adults also hesitate to use certain services unless privacy can be maintained.[7] 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.

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.[8] According to another study, nearly one half of adolescents would stop using family planning clinic services if parental notification were mandatory.[9] 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.[10]

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. [11] 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. [12,13] The second relates to the complex questions associated with use of and access to electronic health records (EHRs) and web portals.[14,15,16] 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 Jersey Health Care Consent Laws

The age of majority in New Jersey is 18; 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 many exceptions to this requirement contained in New Jersey's "minor consent laws." (See Table 1 and Appendix A)

Minor Consent Laws in New Jersey

Linkage of consent & confidentiality
"Consent" & "confidentiality" are not perfectly matched but are closely linked in:
- Clinical practice
- Ethical standards
- Professional policies
- State & federal laws

New Jersey has laws authorizing some minors to consent for health care based on their status. These laws allow married minors, pregnant minors, and minor parents to consent for their own care. New Jersey does not have a statute explicitly authorizing emancipated minors to consent for their own health care but New Jersey laws have recognized the concept of emancipated minor for other specific purposes. (See Table 1 and Appendix A) Minors who are not explicitly authorized to consent for all of their own care based on their status may nevertheless be able to do so for specific services.

New Jersey 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 care for pregnant minors, STD care, HIV treatment, treatment for drug or alcohol use or dependency, outpatient mental health treatment, and services related to a sexual assault. (See Table 1 and Appendix A)

Although New Jersey 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 should be able to do so in other settings based on the constitutional right of privacy or the matures minor doctrine. (see Tables 1 & 2, Appendix A, & Appendix F). Minors may access emergency contraception without parental consent.[17]

Minors in Special Situations

Some adolescent minors are in special situations or have health care needs that are not clearly addressed by the New Jersey minor consent laws. These include, for example, adolescents who are victims of 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, substance abuse services, and mental health counseling in some circumstances. Often these services are relevant to their special situations.

When adolescent minors are in foster care, specific rules determine who can give consent for their health care—their parents, the court, their social worker, or the minors themselves. In New Jersey, consent is provided either by the minor's parent or by the Child Protection and Permanency worker.[18] Minors in foster care may give consent for their own services on the same basis as other minors.[19]

NEW JERSEY CONFIDENTIALITY LAWS

New Jersey laws include protections for the health care information of individuals of all ages, including minor adolescents and young adults. New Jersey 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. Explicit confidentiality requirements also apply to health maintenance organizations. [20] The requirements of the federal HIPAA Privacy Rule for disclosure of protected health information are applicable in Jersey and some parallel requirements have been incorporated into New Jersey law. (See Tables 2 and 3 and Appendix B) New Jersey laws include specific protections for the confidentiality of substance abuse records[21] and HIV information.[22] Health care professionals have a "duty to warn" that obligates them to disclose otherwise confidential information in specific circumstances.[23] New Jersey laws also contain provisions that are specific to the confidentiality of minors' health information, particularly with respect to parents' access to that information. (See Tables 2 and 3 and Appendix B)

Confidentiality Laws for Minors in New Jersey

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 Jersey laws also contain specific protections for the confidentiality of information related to HIV, AIDS, mental health, and substance abuse treatment. New Jersey permits but does not require health care professionals to disclose information to a parent about treatment for which a minor may consent. (See Table 2 and Appendix A) A New Jersey law requiring parental notification for a minor's abortion has been permanently enjoined and is not in effect.[24] 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 Jersey, any person who has reasonable cause to suspect that a child has been abused is required to report.[25] The New Jersey definition of reportable abuse includes physical, emotional, or sexual abuse inflicted or allowed to be inflicted by a parent or person responsible for the child.[26]

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. [27] 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.[28]

These New Jersey 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 and 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 and 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.[29] 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).[30] 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.[31]

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.[32] 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."[33]

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.[34] 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.[35] 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.[36] Other protections address situations in which disclosure may be restricted to protect individuals who may be at risk for domestic violence or child abuse.[37]

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.[38] 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.[39]

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.[40] 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.[41]

Title X Family Planning

The confidentiality regulations for the federal Title X Family Planning Program[42] 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.[43] 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.[44] 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,[45] intimate partner violence to law enforcement,[46] and STDs to public health authorities.[47] 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.[48] 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.[49] The new rule has been challenged in numerous lawsuits.[50]

Medicaid

Federal Medicaid law contains safeguards against disclosure of confidential information.[51] 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.[52] These protections have been interpreted to provide significant protection for confidential access to family planning services for minors.[53] 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.[54]

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;[55,56] they apply to "substance use disorder programs" that meet certain very broad criteria of being "federally assisted."[57] 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.[58] 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.[59] 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.[60]

Ryan White HIV/AIDS Program

The Ryan White HIV/AIDS Program (Ryan White) supports some medical services for patients with HIV.[61] 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.[62]

Federally Qualified Health Centers

Federally qualified health centers (FQHCs) funded under Section 330 of the Public Health Service Act,[63] 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;[64] and some FQHCs receive Title X funds to help provide family planning services. FQHCs are required to maintain the confidentiality of patient records[65] and, if they receive Title X Family Planning funds, to comply with Title X confidentiality regulations. The confidentiality regulation for FQHCs[66] contains language almost identical to the Title X confidentiality regulations.[67]

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.[68]

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 Jersey 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 JERSEY HEALTH CARE CONSENT LAWS FOR MINORS*

New Jersey Minor Consent Laws Based on Status			
Status	**Minor Consent**	**Scope/Limitations**	**Citations**
Age of majority†	< 18 – No ≥ 18 – Yes	Age of majority is 18	N.J. Stat. Ann. §§ 9:17B-1 and 9:17B-3
Emancipated minor	Possibly	For specific purposes, "emancipated minor" includes a minor who has been married, has entered military service, has a child or is pregnant, or has previously been declared by a court or administrative agency to be emancipated	see N.J. Stat. Ann. §§ 55:14L-2 (AIDS housing benefits), 2C:25-19 (domestic violence)
Married minor	Yes	A married minor may consent for medical or surgical care	N.J. Stat. Ann. § 9:17A-1
Pregnant minor	Yes	A pregnant minor may consent to medical & surgical care and on the same basis as an adult	N.J. Stat. Ann. § 9:17A-1
Minor parent	Yes	A married or pregnant minor may consent for medical or surgical care and procedure by a hospital or physician for himself or herself and for his or her child	N.J. Stat. Ann. § 9:17A-1
New Jersey Minor Consent Laws Based on Services			
Service	**Minor Consent**	**Scope/Limitations**	**Citations**
Contraceptives/ family planning	Yes, with limitations	No explicit law authorizing minors to consent for contraceptives/family planning services, but may do so for services funded by Title X and Medicaid and may be able to do so based on constitutional right of privacy or mature minor doctrine	See Appendix F
STI care	Yes	A minor who is believes he or she has a sexually transmitted infection may consent for medical or surgical care or services (Note: See Table 2 re Title X Family Planning)	N.J. Stat. Ann. § 9:17A-4
HIV/AIDS care	Yes	A minor who is at least 13 years of age and is or believes that he or she may be infected with HIV or AIDS may consent to medical or surgical care or services by a hospital, public clinic, or licensed physician	N.J. Stat. Ann. § 9:17A-4
Pregnancy care	Yes	A pregnant minor may consent to medical & surgical care and on the same basis as an adult	N.J. Stat. Ann. § 9:17A-1
Mental health – outpatient	Yes	A minor age 16 or older may consent to outpatient mental health treatment including psychotherapy and other counseling services but not prescription drugs	N.J. Stat. Ann. § 9:17A-4
Alcohol/drug abuse	Yes	A minor may consent for treatment for substance use disorder or alcohol use disorder	N.J. Stat. Ann. § 9:17A-4
Sexual assault	Yes	A minor may consent to medical or surgical care for treatment of sexual assault or a forensic sexual assault examination	N.J. Stat. Ann. § 9:17A-4

* 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 JERSEY & FEDERAL CONFIDENTIALITY LAWS FOR MINORS*

New Jersey Confidentiality Laws for Minors		
	Scope of Protection/Limitations	**Citations**
Disclosure to parents	Health care professional is permitted, but not required, to inform spouse, parent, or guardian of a minor as to the treatment given or needed by a minor who is authorized to consent under *N.J. Stat. Ann. §§ 9:17A-1 and 9:17A-4*, without the consent and even over express refusal of the minor	N.J. Stat. Ann. § 9:17A-5
HIV/AIDS information	Under NJ AIDS Assistance Act "minor" is a person under age 12; health records with identifying information about a person suspected of having AIDS or HIV are confidential & may only be disclosed with the written informed consent of the person, except in enumerated circumstances; when consent is required for disclosure of record of a minor consent shall be obtained from the parent, guardian, or other authorized individual	N.J. Stat. Ann. §§ 26:5C-5,26:5C-7, 26:5C-8, 26:5C-13
Mental health information	Disclosure of mental health records requires consent of minor or parent; mental health professionals are limited in disclosing certain information to parents or others without a minor's consent	N.J. Stat. Ann. § 30:4-24.3; N.J. Admin. Code § 13:42-8.6
Drug/alcohol information	Treatment for substance use alcohol use disorder consented to by minor is confidential information between health care provider and minor patient	N.J. Stat. Ann. § 9:17A-4
Sexual assault information	When a minor appears to have been sexually assaulted, the minor's parents or guardian shall be notified immediately, unless the attending physician believes that it is in the best interests of the patient not to do so	N.J. Stat. Ann. § 9:17A-4
Child abuse reporting	Any person who reasonably suspects that a child has been abused must report; definition of child abuse includes physical, emotional, & sexual abuse inflicted or allowed by a parent	N.J. Stat. Ann. § 9:6-8.9 N.J. Stat. Ann. § 9:6-8.10
Federal Confidentiality Laws for Minors		
	Scope of Protection/Limitations	**Citations**
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 is included in Appendix A and Appendix B.

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

New Jersey Confidentiality Laws for Young Adults		
	Scope of Protection/Limitations	**Citation**
Health maintenance organizations	Information held by HMOs is confidential & may only be released with consent of patient	N.J. Stat. Ann. § 26:2J-27
HIV information	HIV information is confidential & may only be released with consent of patient, subject to exceptions	N.J. Stat. Ann. § 26:5C-7
Mental health information	Mental health information is confidential & may only be released with permission of the patient, subject to certain exceptions	N.J. Stat. Ann. § 30:4-24.3
Psychologist-patient privilege	Communications between psychologist & patient are privileged & disclosure cannot be compelled, subject to exceptions	N.J. Stat. Ann. § 45:2D-11
Drug/alcohol information	Alcohol use disorder information is confidential & may only be released with consent of patient: licensed alcohol or drug counselor may not disclose confidential patient information unless allowed under 42 CFR Part 2	N.J. Stat. Ann. §§ 26:2B-20; 45:2D-11
Duty to warn	Health care professionals are obligated under a "duty to warn" to disclose confidential information in specific circumstances	N.J. Stat. Ann. § 2A:62A-16
Federal Confidentiality Laws for Young Adults		
	Scope of Protection/Limitations	**Citation**
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 and 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' and 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 abuse 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 is included in Appendix B.

APPENDIX A: NEW JERSEY CONSENT & CONFIDENTIALITY LAWS FOR MINORS

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

Minor Consent Based on Status

Age of Majority

N.J. Stat. Ann. §§ 9:17B-1 and 9:17B-3
The age of majority is 18.

Emancipated Minor

New Jersey does not have a statute explicitly authorizing emancipated minors to consent for health care, but should be able to do so.

For statutory definitions of emancipated minor for different purposes, *see N.J. Stat. Ann. §§ 55:14L-2 (AIDS housing benefits) and 2C:25-19 (domestic violence).*

N.J. Stat. Ann. §§ 55:14L-2
For purposes of AIDS housing benefits, "emancipated minor" means a person who is under 18 years of age, but who has been married, has entered military service, has a child or is pregnant, or has previously been declared by a court or an administrative agency to be emancipated.

N.J. Stat. Ann. § 2C:25-19
For purposes of the domestic violence law, "emancipated minor" means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant, or has been previously declared by a court or an administrative agency to be emancipated.

Married Minor

N.J. Stat. Ann. § 9:17A-1
A married minor may consent for medical or surgical care and procedure by a hospital or physician.

Pregnant Minor

N.J. Stat. Ann. § 9:17A-1
A pregnant minor may consent to medical and surgical care and procedure by a hospital or physician, and for such purposes she is deemed to have the same legal capacity to act and shall have the same powers and obligations as has a person of legal age.

Minor Parent

N.J. Stat. Ann. § 9:17A-1
A married or pregnant minor may consent for medical or surgical care and procedure by a hospital or physician for himself or herself and for his or her child.

Minor Consent for Services

Family Planning & Contraceptive Care

New Jersey does not have a statute that explicitly authorizes minors to consent for contraceptive services. They are able to do so in settings funded by the federal Title X Family Planning Services Program or for services paid for by Medicaid and may also be able to do so based on the constitutional right of privacy or the mature minor doctrine. (See Appendix F)

Note: Minors may also access emergency contraception without parental consent.[69]

Pregnancy Related Care

N.J. Stat. Ann. § 9:17A-1
A pregnant minor may consent for hospital, medical, and surgical care related to her pregnancy.

Note: A statute requiring parental notification for a minor to receive an abortion was held unconstitutional and permanently enjoined by the New Jersey Supreme Court; the statute is not in effect.[70]

STI care

N.J. Stat. Ann. § 9:17A-4
A minor who has or believes her or she may have a sexually transmitted infection may consent for medical or surgical care or services by a hospital or physician.

HIV/AIDS Care

N.J. Stat. Ann. § 9:17A-4
A minor who is at least 13 years of age and is or believes that he or she may be infected with HIV or have AIDS may consent to medical or surgical care or services by a hospital, public clinic, or licensed physician.

Drug/Alcohol Care

N.J. Stat. Ann. § 9:17A-4
A minor may consent for treatment of a substance use disorder or an alcohol use disorder and the consent of no other person is necessary.

N.J. Stat. Ann. § 9:17A-4.1
It does not interfere with any parental rights to place a child in treatment on a voluntary or involuntary basis under applicable state law. Treatment programs are not required to admit minors, and may establish their own admission and reimbursement criteria, which may include parental notification and involvement.

Sexual Assault Care

N.J. Stat. Ann. § 9:17A-4
A minor who in the judgment of a treating physician appears to have been sexually assaulted may consent for medical or surgical care or services by a hospital or physician.

Confidentiality & Disclosure

Confidentiality Protection

N.J. Stat. Ann. § 26:5C-5
For purposes of the New Jersey AIDS Assistance Act, a "minor" is a person under the age of 12.

N.J. Stat. Ann. §§ 26:5C-7 and 26:5C-8
Health records which contain identifying information about a person suspected of having AIDS or HIV are confidential and may only be disclosed with the written informed consent of the person, except in enumerated circumstances.

N.J. Stat. Ann. § 26:5C-13
When consent is required for disclosure of the record of a minor (i.e. a person under age 12) who has or is suspected of having AIDS or HIV infection, consent shall be obtained from the parent, guardian, or other individual authorized under State law to act in the minor's behalf.

N.J. Stat. Ann. § 30:4-24.3
Mental health records are confidential and may not be disclosed except in specified circumstances. Consent for disclosure may be given by a minor or the minor's parent or guardian.

N.J. Stat. Ann. § 9:17A-4
When a minor believes that he or she is suffering from a substance use disorder or alcohol use disorder, he or she may consent for treatment, the consent of no other person is necessary, and the treatment is confidential information between the health care provider and the minor patient.

Mental Health Records
N.J. Admin. Code § 13:42-8.6 provides that *N.J. Admin. Code §§ 13:42-8.3, 8.4,* and *8.5* apply to the records of minors (i.e. the rights of access to copy of client record, access by a managed health care plan to information in client record, and confidentiality).

Disclosure to Parents

N.J. Stat. Ann. § 9:17A-5
At the advice and direction of a treating physician, a member of a medical staff is permitted, but not required, to inform the spouse, parent, or guardian of a minor as to the treatment given or needed by a minor who is authorized to consent under *N.J. Stat. Ann. §§ 9:17A-1 and 9:17A-4*. Such information may be given to or withheld from the spouse, parent, or guardian without the consent and even over the express refusal of the minor.

N.J. Stat. Ann. § 9:17A-4
In the case of a minor who appears to have been sexually assaulted, the minor's parents or guardian shall be notified immediately, unless the attending physician believes that it is in the best interests of the patient not to do so; however, inability of the treating physician, hospital or clinic to locate or notify the parents or guardian shall not preclude the provision of any necessary emergency medical or surgical care to the minor.

N.J. Admin. Code § 13:42-8.6
A licensed psychologist is not required to release to a minor's parent or guardian records or information relating to the minor's STD, termination of pregnancy, or substance abuse or any other information that in the reasonable exercise of the licensee's professional judgment may adversely affect the minor's health or welfare.

Child Abuse Reporting

Definitions

N.J. Stat. Ann. § 9:6-8.9
Child abuse includes many forms of harm to a child, including infliction or risk of non-accidental physical injury, impairment of physical or emotional health, and sexual abuse by a parent, guardian, or person having custody and control of the child.

N.J. Stat. Ann. § 9:6-8.10
Any person having reasonable cause to believe that a child has been subjected to child abuse, including sexual abuse, must report immediately to the Division of Child Protection and Permanency.

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 ß 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 ß 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 ß 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 ß 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."*

* 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."

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 Jersey can obtain a particular service confidentially. These questions are based on the New Jersey 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 is their status?
  - Pregnant
  - Married
  - A parent

- What service is the young person seeking?
  - Contraception/family planning
  - STI services
  - HIV/AIDS services
  - Pregnancy care
  - Abortion
  - Mental health services
  - Substance use/alcohol use disorder services
  - Sexual assault treatment
  - Immunizations

- Where is the service being provided?
  - General medical office, health center, or hospital outpatient clinic
  - Title X family planning health center
  - Substance use/alcohol use disorder program

- What is the source of the payment?
  - Private/commercial health insurance
  - Self-pay
  - Parent payment
  - Medicaid
  - Title X Family Planning Program
  - New Jersey state funding
  - Other

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

English A, Ford C. The HIPAA Privacy Rule and adolescents: Legal and ethical questions multiply. Persp on Sexual Reprod Health 2004; 36(2):80-86. https://www.guttmacher.org/journals/psrh/2004/hipaa-privacy-rule-and-adolescents-legal-questions-and-clinical-challenges.

George Washington University, Hirsh Health Law and Policy Program. Health Information and the Law: Privacy & Confidentiality in New Jersey. http://www.healthinfolaw.org/state-topics/31,63/f_states.

Legal Action Center. Substance Use: Confidentiality Resources. https://lac.org/resources/substance-use-resources/confidentiality-resources/.

Morreale MC, Stinnett AJ, Dowling EC, eds. Policy Compendium on Confidential Health Services for Adolescents, 2d ed. Chapel Hill NC: Center for Adolescent Health & the Law, 2005. http://www.cahl.org/PDFs/PolicyCompendium/PolicyCompendium.pdf.

N.J. Dept. of Human Services. HIPAA – Health Insurance Portability and Accountability Act. http://www.state.nj.us/humanservices/home/hipaa.html.

U.S. Dep't of Health & Human Services, Admin. for Children & Families. Child Welfare Information Gateway. State Statutes Search: New Jersey. https://www.childwelfare.gov/topics/systemwide/laws-policies/state/?CWIGFunctionsaction=statestatutes:main&CWIGFunctionspk=1.

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)

English A, Mulligan A, Coleman C. Protecting Patients' Privacy in Health Insurance Billing & Claims: An Illinois Profile (2017) [Note: Similar profiles were published for 5 other states studied as part of the Confidential & Covered project: Maryland and Oregon in 2017; California, Colorado, and Washington in 2016]

Lewis J, Summers R, English A, Coleman C. Proactive Policies to Protect Patients in the Health Insurance Claims Process (2015)

English A, Lewis J. Privacy Protection in Billing and Health Insurance Communications. AMA J Ethics 2016; Vol 18(3): 279-87

Burstein G et al. Confidentiality Protections for Adolescents and Young Adults in the Health Care Billing and Insurance Claims Process: Position Paper of the Society for Adolescent Health & Medicine and American Academy of Pediatrics. J Adolesc Health 2016;58:374-377.

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AAP Committee on Adolescence. Policy Statement for Health Information Technology to Ensure Adolescent Privacy. Pediatrics 2012;130(5): 987-990.

Anoshiravani A et al. Special Requirements for Electronic Medical Records in Adolescent Medicine. J Adolesc Health 2012;51:409-41

Gray S et al. Recommendations for Electronic Health Record Use for Delivery of Adolescent Health Care: Position Paper of the Society for Adolescent Health and Medicine. J Adolesc Health 2014;54:487-490.

APPENDIX F: CONSENT FOR CONTRACEPTION & FAMILY PLANNING SERVICES

New Jersey does not have an explicit law authorizing minors to consent for contraception or family planning services. However, no New Jersey 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 based on their own consent.

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.[71] Title X funded services, including services for adolescents, must be confidential.[72]

Federal Medicaid law contains safeguards against disclosure of confidential information.[73] 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.[74] These protections have been interpreted to provide significant protection for confidential access to family planning services for minors.[75]

An additional source of possible support for allowing minors to consent for contraceptive services 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.[76] 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). 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.[77]

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;[78] and the right of privacy with respect to decisions about procreation has been extended to minors as well as adults.[79] In Carey v. Population Services International, the U.S. Supreme Court recognized that minors' constitutional right of privacy encompasses access to contraceptives.[80] In other cases, federal courts have held that minors have constitutional privacy interests[81] and that providing contraception information and services to minor children does not violate the rights of their parents.[82]

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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