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The Provider's Source Special Edition: Confidentiality in Adolescent Substance Abuse Treatment "Building Bridges, Closing Gaps"

Understanding Confidentiality and Consent for Services to Minors

Youth, families, and providers alike all face issues regarding confidentiality and consent for treatment in both the substance abuse and mental health arenas. For many of these individuals, there is confusion about whether minors can consent for substance abuse and mental health resources apart from their legal guardian. One way to help clarify these issues is to have a better understanding of the rights and responsibilities as they relate to the state and federal confidentiality and consent laws.

The laws surrounding confidentiality and consent for minors can affect how and where minors are able to access treatment services. The purpose of confidentiality is to encourage honest communication between counselor and client, doctor and patient, or school counselor and student. Without confidentiality, an adolescent may not be completely honest, may refuse to enter treatment, or may wait longer before seeking help.¹ This is particularly true if adolescents fear what their parents might say if they knew the details of their treatment. In fact, several studies have found that adolescents would not seek services if their parents had to be notified about the doctor's visit.¹

In some cases, the laws also affect a parent's ability to be fully involved in their child's treatment. This can cause both anger and anxiety in parents because they are left wondering what is going on with their own child, especially if the laws are not adequately explained by the provider. It might be hard for parents to become fully engaged with the treatment process, or they might feel uncomfortable that decisions are being made in the best interests of their child if they are not directly involved in his/her care.

Because confusion and frustration about confidentiality and consent can be a barrier to accessing treatment, we consulted with Mark Botts, J.D., an Associate Professor of Public Law and Government in the School of Government at the University of North Carolina (UNC), to provide a summary of the relevant law. The state statute G.S. 90-21.5 is reprinted below followed by a synopsis of common questions and answers to understand state statute G.S. 90-21.5 and federal regulation 42 C.F.R. Part 2 is provided below.

¹Society for Adolescent Medicine. (1997). Confidential health care for adolescents: Position paper of the society for adolescent medicine. *Journal of Adolescent Health, 21*, 408-415.



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§ 90-21.5. Minor's consent sufficient for certain medical health services.

(a) Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance.

This section does not authorize the inducing of an abortion, performance of a sterilization operation, or admission to a 24-hour facility licensed under Article 2 of Chapter 122C of the General Statutes except as provided in G.S. 122C-222. This section does not prohibit the admission of a minor to a treatment facility upon his own written application in an emergency situation as authorized by G.S. 122C-222.

(b) Any minor who is emancipated may consent to any medical treatment, dental and health services for himself or for his child. (1971, c. 35; 1977, c. 582, s. 2; 1983, c. 302, s. 2; 1985, c. 589, s. 31; 1985 (Reg. Sess., 1986), c. 863, s. 4.)

Common Questions:

Under what circumstances may a minor consent to mental health or substance abuse services?

Generally, health services – including mental health and substance abuse services – may not be provided to a minor (an individual under 18 years of age) without the provider first obtaining the consent of a parent, a guardian, a person standing *in loco parentis*, or a legal custodian other than a parent who has been granted specific authority by law or a custody order to consent to medical services on behalf of the child. (A person standing *in loco parentis* is one who has assumed the status and obligations of a parent without formal adoption. From this point forward, the term “parent” in this article is used to refer to all categories of custodians noted above).

Some exceptions to the general rule exist. For example, if an effort to locate and contact the parent would result in a delay that would seriously worsen the physical condition of the minor, treatment may be provided without first obtaining the permission of the parent. Other exceptions, including those that apply specifically to mental health and substance abuse treatment, are described below. Unless these exceptions apply, a provider risks legal liability for providing health services without the consent of a parent.

A minor who is “emancipated” may consent to any medical treatment and health services. A minor is emancipated if married or declared emancipated by court order. The question may arise whether a minor who is a parent, but not emancipated, may consent to the treatment of his or her child. Because parenthood, alone, does not emancipate a minor, the minor parent may not consent to his or her own treatment. Yet, as a parent, the minor may consent to the treatment of his or her child.

For certain health services, the *unemancipated* minor’s consent is sufficient. A North Carolina statute, G.S. 90-21.5, provides that a minor may give consent to a *physician* for “medical health services for the prevention, diagnosis, and treatment” of venereal and other communicable diseases, pregnancy, abuse of controlled substances, and “emotional disturbance” (mental illness). Although the statute provides for consent to and treatment by a physician, health service functions may be delegated to other health care professionals, including mental health and substance abuse professionals, so long as that professional is acting under the supervision and direction of a physician and is otherwise professionally qualified to perform the delegated responsibilities.

But, it is important to remember that unless the mental health or substance abuse program has a physician who is supervising services, the minor's treatment will require parental consent. Further, the fact that a mental health or substance abuse professional *may* provide supervised services without parental consent does not mean that the professional *must* do so.

May minors consent to both outpatient and inpatient substance abuse services?

G.S. 90-21.5 is effectively limited to outpatient services, as it does not authorize a minor to consent to his or her own admission to a 24-hour facility. Only in an emergency may a minor who is unaccompanied by a parent be admitted to a 24-hour facility for psychiatric or substance abuse services upon his or her own written application.

Is a minimum age required for a minor to consent to treatment under G.S. 90-21.5?

G.S. 90-21.5 sets no minimum age for consent. Rather, for the services listed, it simply removes the legal presumption that a minor is not competent to give consent. The provider still must ascertain in each case whether the minor has the capacity to understand the risks and benefits of the proposed treatment and give informed consent.

When a minor receives mental health or substance abuse services pursuant to his or her own consent under G.S. 90-21.5, may the provider disclose patient information to the child's parents?

Without the minor's permission, a provider of mental health services cannot notify a parent that the minor is receiving services. Thus, unless the minor consents to the disclosure of information, efforts to seek reimbursement for services, either from the parent directly or from a third party payer that requires the involvement of a parent, are precluded. There are two exceptions that apply to mental health services. If the attending physician believes that parental notification is "essential to the life or health of the minor," the physician may notify a parent regarding services received pursuant to G.S. 90-21.5. In addition, if a parent contacts the provider to learn about services being provided to the minor, the physician may give information. It is within the physician's discretion to determine not only whether disclosure is appropriate but also how much information to disclose.

The law appears to place the responsibility for disclosure solely on the attending physician, even though other professionals acting under the physician's supervision may have the most contact with the minor. Accordingly, personnel treating a minor should consult with the physician if either of the two conditions permitting disclosure arise.

Other legal rules apply to substance abuse services. For health care professionals who provide services through a substance abuse program covered by the federal law governing alcohol and drug abuse patient records (42 C.F.R. Part 2) the provisions of state law that allow parental disclosure in certain circumstances do not apply. Instead, where a minor alone consents to substance abuse services pursuant to G.S. 90-21.5, the minor's written authorization is required before patient information may be disclosed to a parent. If a minor applies for substance abuse services that cannot be provided without parental consent to treatment because the provider does not have a physician to supervise services, then the fact that the minor applied for services can

be communicated to a parent if the minor, in writing, authorizes the communication. If the provider believes that the minor, due to extreme youth or a mental or physical condition, lacks the capacity to make a rational decision about authorizing disclosure to a parent, the provider may disclose facts relevant to reducing a threat to the life or physical well-being of the applicant or others if the provider believes that the applicant's situation poses a substantial threat to the life or physical well-being of the applicant or any other individual.

When a minor receives substance abuse treatment services pursuant to a parent's consent to treatment and, thereafter, patient authorization is needed to make a disclosure of patient information, disclosure may be made only if both the parent and the minor child sign the written authorization. Both the federal law governing substance abuse service records and the state law governing mental health records contain rules addressing the disclosure of records in a variety of circumstances. These rules, or someone with expertise in these rules, should be consulted when treatment professionals are considering the disclosure of patient information, whether to a parent or to another person or agency.

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We would like to hear your thoughts on the issues that were addressed in this article. Please give us any general feedback, immediate reactions, feelings, suggestions, etc. that you have had in response to this article. For example, do you agree or disagree with the current laws? Were you aware or had you been informed of these laws prior to reading this article? Do you think adolescents are aware of these laws? How do you think these laws affect services? What has your experience been with these laws? Should the laws be changed? If so, how? Please send your responses to mesmell@uncg.edu, or fax to 336-217-9750 (attention Kelly Graves), or mail to Kelly Graves at 330 S. Greene Street, Suite 200, Greensboro, NC 27401.