Privacy Issues in a Pediatric Healthcare Setting
HIPAA Summit
September 9, 2005, Session IV

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Birmingham, Alabama
Privacy Officer
Overview

- Conflict Resolution - How to resolve conflicts between parental authority and childhood privacy?

- Conflict Resolution Toolbox - What sorts of tools might be useful in addressing such conflicts?
Conflict Resolution

- Why is patient privacy important?
  - Morally, it’s important because it safeguards patient autonomy - the ability of a patient to make informed decisions about his/her healthcare.
  - Legally, it’s important because it is a fundamental right, which according to HIPAA is enforced by the Office for Civil Rights.
Conflict Resolution

- Why is patient privacy important?
  - The American Medical Association
    "The AMA reaffirms that confidential care for adolescents is critical to improving their health…The AMA encourages physicians to involve parents in the medical care of the adolescent patient, when it would be in the best interest of the adolescent. When, in the opinion of the physician, parental involvement would not be beneficial, parental consent or notification should not be a barrier to care."
  - The American Academy of Pediatrics
    "A general policy guaranteeing confidentiality for the teenager except in life-threatening situations should be clearly stated to the parent and the adolescent at the initiation of the professional relationship, either verbally or in writing."
Conflict Resolution

Why is patient privacy problematic in a pediatric healthcare setting?

- Morally, it’s problematic because it can conflict with parental duties and authority. Parents are supposed to meet the healthcare needs of their children. Failure to meet such needs normally is morally blameworthy. Since parents are presumed to be more knowledgeable and informed about matters of health than their children, it seems that their authority should matter more in addressing the healthcare needs of their children, than the child’s privacy. Parents have a “need to know.”
Conflict Resolution

- Why is patient privacy problematic in a pediatric healthcare setting?

  - Legally, it’s problematic because parents are legally responsible for their children. If a child makes a poor decision that negatively impacts on his or her health, then the parent can be responsible for seeing that the decision is overridden.
Conflict Resolution

- How can the problem be solved?

  - Method One. One solution fits all.

  - Method Two. Solutions must be tailor-made to the specifics of each *type* of situation.
Conflict Resolution

● What are the main types of situations?
  ○ Different Types of Minors
    ● Mature v. Immature
    ● Emancipated v. Unemancipated
  ○ Status of Parent
    ● Custodial v. Noncustodial
  ○ Highly Sensitive Illness v. More General Illness
    ● HIV, Psychiatric Conditions, Sexually Transmitted Diseases v. General Medicine and Surgery Problems
Conflict Resolution

What are some of the issues raised by the main types?

Three representative types

Case One. Suzie is 16 years old. She presented alone to her pediatrician’s practice with symptoms of nausea, fatigue, and a missed period. The practice administered pregnancy test shows positive. Suzie doesn’t want her parents to know the results. Should you call Suzie’s parents to tell them she is pregnant? What if Suzie was 12 instead of 16? Does that make a difference?
Conflict Resolution

- Case One– the issue of mature or emancipated minor.
  - What would Method One say?
  - What would Method Two say?
Conflict Resolution

- Three representative types
  - Case Two. Jane is a minor and her parents are divorced. Her father is the custodial parent and he requested for no information about Jane’s hospital visit to be released to Jane’s mother, the non-custodial parent. Jane’s mother calls asking questions about Jane’s hospital stay. Should you talk with the mother?
Conflict Resolution

● Case Two - the issue of custodial vs. noncustodial parent
  ○ What would Method One say?
  ○ What would Method Two say?
Conflict Resolution

- Three representative types
  - Case Three. Johnny, a minor, was in a car accident and is now a patient at a children’s hospital. The lab work returned states he is HIV positive. Johnny’s legal guardian is his grandmother. Do you tell Johnny’s grandmother that he is HIV positive? What if the information was only a Xray returned which said he had a fracture? Does that make a difference?
Conflict Resolution

- Case Three - the issue of a highly sensitive illness in a minor
  - What would Method One say?
  - What would Method Two say?
Solving the Problem

● Best approach: **Method Two**
  ○ What’s wrong with Method One? It neglects relevant situations and the distinct laws of different states. Method One is too, too broad.
  ○ What’s right about Method Two? Cases are not all of the same type. Solutions therefore should vary on a type by type of case basis.
Solving the Problem

- **Best approach: Method Two**
  - Solutions must be tailor made to the specifics of each *type* of situation.
  - With the following proviso, HIPAA can defer to state law and different laws apply in different states. For example, for age of emancipation:
    - **California** - a person under the age of 18 years [California Family Code Section 7000-7002]
    - **Florida** - a minor age 16 or older [Chapter 743, Florida Statutes]
    - **District of Columbia** - no emancipation statute
    - **Alabama** - minors over 18 years of age [Ala. Code §26-13-1]
Solving the Problem

- Best approach: Method Two
  - HIPAA, 45 CFR 164.502(g)(3). Parents as personal representatives of unemancipated minor.
    - Parent, Legal Guardian, or other person acting in *loco parentis* with legal authority to make health care decisions on behalf of the unemancipated minor child (act as the “personal representative”).
    - HIPAA defers to state law on the issue of whether the parent is the “personal representative.”
Solving the Problem

- **Best approach:** Method Two
  - HIPAA, 45 CFR 164.502(g)(3). Parents as personal representatives of unemancipated minor.

- **Exceptions:**
  - State law only requires minor consent to a health service.
  - Court authorizes someone other than parent to make treatment decisions.
  - Parent agrees to confidential relationship between minor and physician.
Solving the Problem

- Best approach: **Method Two**
  - HIPAA, 45 CFR 164.502(g)(3). Parents as personal representatives of unemancipated minor.

- **Other considerations:**
  - Abuse or Neglect
  - Psychotherapy Notes
Solving the Problem

- Best approach: **Method Two**
  - HIPAA, 45 CFR 164.502(g)(3). Parents as personal representatives of unemancipated minor.
    - Parental access permitted when State law requires or permits access.
    - Parental access denied when State law denies access.
    - If State law is silent, provider may exercise professional judgment.
Conflict Resolution Toolbox

● Communication Tools

○ HIPAA & You- Notice of Privacy Practice Explanatory Brochure directed at entire family (kid-friendly)

○ Family Education video (with a “HIPAA Safari” theme) for broadcast on hospital TV channel

○ Various forms available to staff from hospital website
### Hospital Inpatient Information Directory

When your child is being admitted, you can make the decision to withhold or release information to callers and visitors at the Hospital Patient Information Desk. This information includes patient name, location/room number, and condition.

Your healthcare providers can still obtain your child's information.

### Hospital Overhead Paging

For your privacy protection, Children's Hospital uses telephone numbers, not locations, for hospital overhead paging. If you leave the inpatient area and are needed, you will be paged to call your child's nursing unit or the Operator.

### Requests for Media Coverage

If you are requesting media coverage for your child, you must schedule this through Corporate Communications at (205) 939-6660. Advance notice is necessary.

### What can you do to help?

Take privacy personally! Before you speak about other patients, ask yourself: Would I want this information reported about my child? You know how important your child's privacy is to you, so please respect the privacy of other children.

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**THANKS**

**FOR BEING OUR PARTNER IN PRIVACY!**

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### Your Children's Health System HIPAA Phone Numbers:

<table>
<thead>
<tr>
<th>Department</th>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>HIPAA Privacy Officer</td>
<td>(205) 939-5959</td>
</tr>
<tr>
<td>HIPAA Security Officer</td>
<td>(205) 939-6566</td>
</tr>
<tr>
<td>Access Center/Hospital Registration</td>
<td>(205) 939-5632</td>
</tr>
<tr>
<td>CHECK Center/Patient Education</td>
<td>(205) 933-9377</td>
</tr>
<tr>
<td>Hospital Patient Information Directory</td>
<td>(205) 939-0111</td>
</tr>
<tr>
<td>Corporate Communications</td>
<td>(205) 939-6660</td>
</tr>
<tr>
<td>Medical Information Services</td>
<td>(205) 939-3519/3515</td>
</tr>
<tr>
<td>Patient Relations</td>
<td>(205) 939-3191</td>
</tr>
<tr>
<td>Social Services</td>
<td>(205) 939-3684</td>
</tr>
</tbody>
</table>

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**CHILDREN’S HEALTH SYSTEM**

Children are the future of our future.
What is HIPAA?
HIPAA stands for the Health Insurance Portability and Accountability Act of 1996. It is the first federal law that protects the privacy and security of your child's confidential health information.

Why is it important to know about HIPAA?
Protecting confidentiality is an important part of providing quality care for your child.

Why should you be happy about HIPAA?
You trust us to keep your child's health information confidential and secure. We are committed to maintaining your trust. HIPAA strengthens this trust by providing new national privacy protections for your child's health information.

How is Children's Health System complying with HIPAA?
As is Children's Health System (CHS) tradition, we comply with governing laws—including HIPAA. Teams throughout CHS are implementing and monitoring our HIPAA strategy.

What are your child's privacy rights?
Understand your child's privacy rights. If in doubt, ask about them!

Your child's privacy rights:

Rights to Access and Correct Information:
- Right to Review and Copy
- Right to Request Amendment
- Right to Accounting of Disclosures
- Right to Request Restrictions
- Right to Confidential Communications
- Right to Withdraw Your Authorization

For CHS Locations:
- CHS Pediatric Practice (Practice Manager: Children's South, Park Place Services, Day Clinic, and After Hours - from the Clinic Coordinator)
- CHS Hospital Building (For More Information: Children's Hospital, 1000 9th Avenue South, Birmingham, Alabama 35223, Fax (205) 930-8780)

Right to Receive Copy of the Notice of Privacy Practices

What does this mean to you?
You may ask us to give you a copy of the Notice of Privacy Practices at any time.

For CHS Hospital Building:
- Access Center, Patient Relations, Medical Information Services, Comprehensive Health Education Center for Kids (CHEek), and Social Services.

For Other CHS Locations -
- Pediatric Practice (Practice Manager: Children's South, Park Place Services, Day Clinic, and After Hours - Clinic Coordinator)
- You may also access the CHS website for the latest version of the Notice http://www.chosp.org.

How can you complain?

If you would like to discuss your privacy rights or need further information, please contact the
- CHS Privacy Officer at (205) 930-8780
- Children's Hospital, 1000 9th Avenue South, Birmingham, Alabama 35223, Fax (205) 930-8780
- Children's Hospital, Birmingham, Alabama 35223
- For Children's Hospital, Birmingham, Alabama 35223, Fax (205) 930-8780.
## Sample Form

### CHILDREN'S HEALTH SYSTEM
REQUEST FOR CONFIDENTIAL COMMUNICATIONS
OF PROTECTED HEALTH INFORMATION

<table>
<thead>
<tr>
<th>Patient Information</th>
<th>Request for Confidential Communications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Patient Name:</strong> (Please print)</td>
<td><strong>Request Date:</strong></td>
</tr>
<tr>
<td><strong>Street Address:</strong></td>
<td><strong>Birth Date:</strong></td>
</tr>
<tr>
<td><strong>City/State/Zip:</strong></td>
<td><strong>Date of Service:</strong></td>
</tr>
</tbody>
</table>

**Request for Confidential Communications**

<table>
<thead>
<tr>
<th>Address to Send Patient's Health Information (if different from above):</th>
<th>Dates Requested:</th>
</tr>
</thead>
<tbody>
<tr>
<td>I would like confidential communications for the patient's records with the following dates:</td>
<td>From: To:</td>
</tr>
</tbody>
</table>

**Please describe what you want to happen:**

**Signature of Parent/Legal Guardian/Patient**

I represent that I am the parent/legal guardian of the patient and have the authority to request this confidential communication. I understand that CHS may not be able to accept this request if prohibited by law.

**Parent/Legal Guardian Signature:** ___________________________ **Date:** ____________

**Patient Signature if 14 or older:** ___________________________ **Date:** ____________

**Witness Signature:** ___________________________ **Date:** ____________

**INTERNAL USE ONLY:**

**IMPORTANT: PLEASE PLACE VISIBLY IN RECORD. ROUTE COPY TO HIPAA OFFICE.**

**Date Received:** ____________ **Date Sent:** ____________

**Comments:** ____________________________

**Caregiver Processing Request:** ____________________________ **MIS Initials:** ____________________________ **HIPAA Initials:** ____________________________
# CHILDREN'S HEALTH SYSTEM

## REQUEST FOR RESTRICTION

OF PROTECTED HEALTH INFORMATION

### Patient Information

<table>
<thead>
<tr>
<th>Patient Name: (Please print)</th>
<th>Request Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Address:</td>
<td>Birth Date:</td>
</tr>
<tr>
<td>City/State/Zip:</td>
<td>Date of Request:</td>
</tr>
</tbody>
</table>

### Request for Restriction

Please describe whose access is restricted:

<table>
<thead>
<tr>
<th>DatesRequested For Restriction:</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
</tr>
<tr>
<td>To:</td>
</tr>
</tbody>
</table>

I would like a restriction for my child’s records with the following dates:

<table>
<thead>
<tr>
<th>Please describe what information you'd like restricted.</th>
</tr>
</thead>
</table>

### Signature of Parent/Legal Guardian/Patient

I represent that I am the parent/legal guardian of the patient and have the authority to request this restriction. I understand that CHS may not be able to accept this request if prohibited by law.

<table>
<thead>
<tr>
<th>Parent/Legal Guardian Signature:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patient Signature if 14 or older:</td>
<td>Date:</td>
</tr>
<tr>
<td>Witness Signature:</td>
<td>Date:</td>
</tr>
</tbody>
</table>

### INTERNAL USE ONLY

Date Received: Date Sent: Date Sent:

Comments:

Employee Processing Request: MIS Initials: HIPAA Initials:
HIPAA TELEPHONE CONSENT STATEMENT FOR ELECTIVE PROCEDURES

I am the parent and/or legal guardian of: _______________________________________.

I represent that I am not present at Children’s Health System (CHS). I hereby consent, via telephone, for my child’s medical treatment and/or for release of medical information to my designated representative: _______________________________________.

I understand that CHS and/or the physicians cannot be held responsible for my absence.

____________________________________________________________
Parent/Legal Guardian Name and Relationship

_______________________________________________
Witness Name and Signature                              Professional Capacity

_______________________________________________
Witness Name and Signature                              Professional Capacity

Date: __________________      Time:_______________

(Place this form with the medical record)
Conflict Resolution Toolbox

- Why are tools important?
  - Resources for the health system.
  - Explanatory in helping to reduce the potential for conflicts.
  - Demonstrate how conflicts have been addressed.
Conflict Resolution Toolbox

- **Tips for Adolescent Privacy**
  - Be upfront with teens and parents regarding confidentiality practices.
  - When appropriate, share HIPAA request for restrictions and/or confidential communications forms (see samples) with teens.
  - Talk about Notice of Privacy Practices with teens. Get them to ask questions.
Conflict Resolution Toolbox

- **Tips for Adolescent Privacy**
  - Make sure teens are aware of how their medical information is shared, i.e., with insurance companies.
  - Work to earn the teen’s trust by being flexible but advising them of your limits.
  - Notify teens of their right to file grievances.
Conflict Resolution Toolbox

- Helpful Websites

  - HHS Office for Civil Rights - HIPAA
    - [http://www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/)
  - HIPAA Summit
    - [http://www.hipaasummit.com](http://www.hipaasummit.com)
  - National Center for Youth Law
    - [http://www.youthlaw.org](http://www.youthlaw.org)
  - Health Privacy Project, Institute for Health Care Research and Policy, Georgetown University
    - [http://www.healthprivacy.org](http://www.healthprivacy.org)
Conclusion

- Conflict is a constant. However, by a combination of understanding the main types of conflicts and having an appropriate toolbox, most conflicts can be addressed and resolved for the benefit of both child and parents in a manner that respects patient privacy.