

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

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# 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

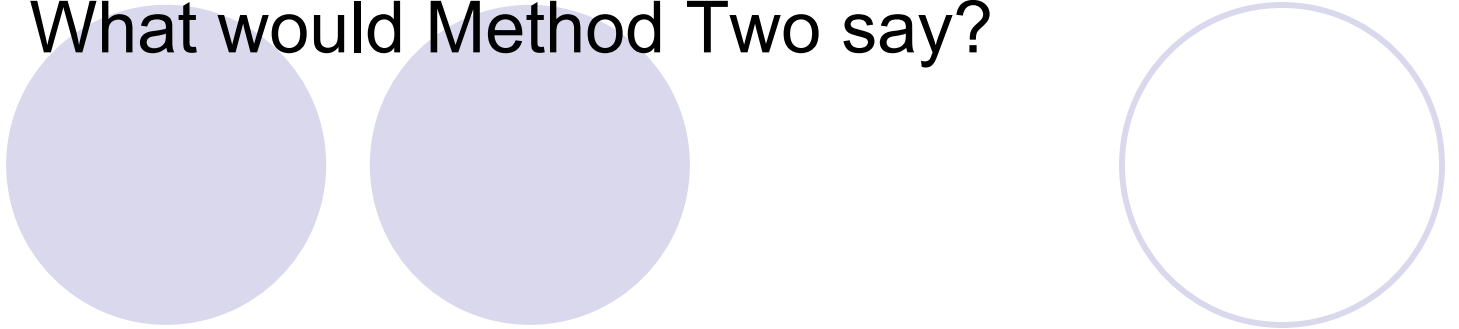
- What are some of the issues raised by the main types?
  - Three representative types
    - Case One. Suzie is 16 years old. She presented alone to her pediatrician's practice with symptoms of nausea, fatigue, and a missed period. The practice administered pregnancy test shows positive. Suzie doesn't 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 repeated about my child? You know how important your child's privacy is to you, so please respect the privacy of other children.

# THANKS

FOR BEING OUR PARTNER IN PRIVACY!

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

HIPAA Privacy Officer	(205) 939-5959
HIPAA Security Officer	(205) 939-6556
Access Center/Hospital Registration	(205) 939-9632
CHECK Center/Patient Education	(205) 939-9377
Hospital Patient Information Directory	(205) 939-9111
Corporate Communications	(205) 939-6660
Medical Information Services	(205) 939-9210/9615
Patient Relations	(205) 939-9191
Social Services	(205) 939-9684



CHILDREN'S  
HEALTH SYSTEM®

Children are the center of our lives.

# HIPAA and YOU



Happy



### 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 Hippo the Hippo happy about HIPAA?

Privacy makes perfect sense! Protecting confidentiality is an important part of providing quality care for your child.

### Why should you be happy too?

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 protection 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 have been 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 regarding health information are:

- Right to Review and Copy
- Right to Request Amendment
- Right to Accounting of Disclosures
- Right to Request Restrictions
- Right to Confidential Communications
- Right to Revoke Your Authorization
- Right to Receive Copy of the Notice of Privacy Practices

These rights are subject to change and some restrictions may apply by law. Forms are available to you to exercise these rights by contacting:

### For CHS Hospital Building:

The Medical Information Services Department—F1 Floor—Children's Hospital Building (across from Chapel)—or 8<sup>th</sup> Floor—Children's Park Place/1600 7<sup>th</sup> Avenue South. (205) 939-9210/9615.

### For Other CHS Locations:

CHS Pediatric Practices—from the Practice Manager, Children's South, Park Place Services, Day Clinics, and After hours - from the Clinic Coordinator.

### Right to Review and Copy What does this mean to you?

You have the right to review and receive a copy of your child's health information. There will be a reasonable fee for copying costs.

### Right to Request Amendment What does this mean to you?

If you believe the health information we have about your child is incorrect or incomplete, you may ask us to amend the information. Please note health information can be corrected by law when there is acceptable reason to do so.

### Right to Accounting of Disclosures What does this mean to you?

You have the right to request a list of places where your child's health information has been sent.

### Right to Request Restrictions What does this mean to you?

You must tell us what health information you want released about your child and to whom. We will comply with your request unless the health information is required by law—i.e., to provide care for your child, for payment, or for healthcare operations.

### Right to Request Confidential Communications What does this mean to you?

You have the right to request that we communicate with you about medical matters regarding your child in a certain way or to a certain location. For example, you may request we only contact you at work or by corresponding to a post office box.

### Right to Revoke Your Authorization What does this mean to you?

You have the right to withdraw your consent regarding release of your child's health information.

### 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 (CHECK), and Social Services.

FOR OTHER CHS LOCATIONS—Pediatric Practices (Practice Manager), Children's South, Park Place Services, Day Clinics, and After Hours (Clinic Coordinator).

You may also access the CHS web site for the latest version of the Notice <http://www.chsys.org>.

If you would like to discuss your privacy rights or need further information, please contact the CHS Privacy Officer at (205) 939-6969, Children's Hospital, 1600 7<sup>th</sup> Avenue South, Birmingham, Alabama 35233. Fax (205) 558-2180.

### How can you complain?

We care about your concerns! If you believe your child's privacy rights have been violated, you may file a complaint. Please contact CHS Patient Relations for assistance at (205) 939-9191, Children's Hospital, 1600 7<sup>th</sup> Avenue South, Birmingham, Alabama 35233, Fax (205) 939-6724. Or, you may contact your Practice Manager at the practice's mailing address or in care of the Children's Hospital address above.

You may also file a complaint with the U.S. Department of Health and Human Services, Office for Civil Rights. You will never be penalized for filing a complaint.



# Sample Form

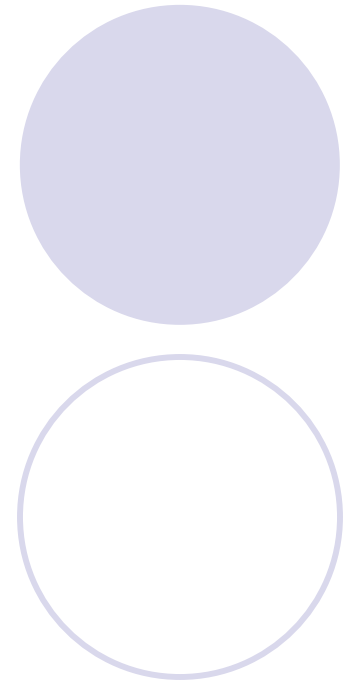
CHILDREN'S HEALTH SYSTEM REQUEST FOR CONFIDENTIAL COMMUNICATIONS OF PROTECTED HEALTH INFORMATION			
Patient Information			
Patient Name: (Please print)		Request Date:	
Street Address:		Birth Date:	
City/State/Zip:		Date of Service:	
Request for Confidential Communications			
Address to Send Patient's Health Information (if different from above):			
Dates Requested:	I would like confidential communications for the patient's records with the following dates: From: _____ To: _____		
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: _____			





# Sample Form

CHILDREN'S HEALTH SYSTEM REQUEST FOR RESTRICTION OF PROTECTED HEALTH INFORMATION			
Patient Information			
<b>Patient Name:</b> (Please print)		<b>Request Date:</b>	
<b>Street Address:</b>		<b>Birth Date:</b>	
<b>City/State/Zip:</b>		<b>Date of Request:</b>	
Request for Restriction			
<b>Please describe whose access is restricted:</b>			
<b>Dates Requested For Restriction:</b>	I would like a restriction for my child's records with the following dates:		
	From:		To:
<b>Please describe what information you'd like restricted.</b>			
Signature of Parent/Legal Guardian/Patient			
<p>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.</p> <p>Parent/Legal Guardian Signature: _____ Date: _____</p> <p>Patient Signature if 14 or older: _____ Date: _____</p> <p>Witness Signature: _____ Date: _____</p>			
<p>INTERNAL USE ONLY: Date Received: _____ Date Sent: _____</p> <p>Comments: _____</p> <p>Employee Processing Request: _____ MIS Initials: _____ HIPAA Initials: _____</p>			



# Sample Form

## HIPAA TELEPHONE CONSENT STATEMENT FOR ELECTIVE PROCEDURES

I am the parent and/or legal guardian of: \_\_\_\_\_  
Patient's Name

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: \_\_\_\_\_  
Name of Designated Representative and Relationship

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/>
  - HIPAA Summit
    - <http://www.hipaasummit.com>
  - National Center for Youth Law
    - <http://www.youthlaw.org>
  - Health Privacy Project, Institute for Health Care Research and Policy, Georgetown University
    - <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.

