



Confidentiality

This chapter is not designed to be an exhaustive discussion of confidentiality issues for children and adolescents in foster care, but rather an introduction and a guideline. This is a complex area governed by clearly defined legislation and regulations that vary from state to state. In addition, foster care agencies have developed individual policies interpreting these laws and regulations. Health care professionals are advised to become familiar with the policies of their particular agency or contact an administrative, legal, or health care management official at the agency when questions or concerns about confidentiality issues arise.

Health care professionals always have to weigh their patients' rights to privacy and legally protected confidentiality against the needs of other individuals involved in the care of their patients to know information to facilitate health care. This is particularly true in areas such as human immunodeficiency virus (HIV) testing or infection, sexuality, mental health, substance abuse, and family medical history.

In this chapter, birth parents refers to birth parents and legal guardians, and agencies includes private foster care agencies and local social service agencies.

The Health Insurance Portability and Accountability Act (HIPAA) applies to children and adolescents in foster care, and it is assumed that health care professionals are in compliance with HIPAA. The information in this chapter is specific to foster care.

Frequently Asked Questions

Who Has Access to Medical Information Concerning Children and Adolescents in Foster Care?

Health care professionals should assume that all medical information is confidential. In addition, they should assume that confidentiality extends to names, addresses, and phone numbers of children and adolescents, foster parents, and relatives. Medical information may be shared with caseworkers, other designated agency personnel, and foster parents (some exceptions to this are noted in the next question and answer). Health care professionals should check with administrative or legal personnel at foster care agencies before releasing information to birth parents.

Are There Any Exceptions to Sharing Medical Information With Caseworkers and Foster Parents?

In general, caseworkers and foster parents have access to all medical information about children and adolescents in foster care for whom they are responsible, except in the following cases:

- Health care professionals should assume that minors with the capacity to consent have the right to absolute confidentiality for issues related to family planning and reproduction, sexually transmitted diseases, and substance abuse. This information may not be shared with caseworkers, foster parents, or birth parents without the express consent of the minors with capacity to consent. Minors with capacity to consent should be encouraged to share information with adults responsible for them. Health care professionals should check with state legal authorities to clarify the rights of minors with capacity to consent in those states.
- Agency personnel and foster parents may, in general, have access to HIV-related information about children or adolescents in foster care, including minors with the capacity to consent. However, HIV-related information may not be disclosed to others, including

birth parents, without written release from minors with the capacity to consent. Human immunodeficiency virus–related information for children lacking capacity to consent may be shared with birth parents or others with the consent of those persons authorized to consent on behalf of the children. Health care professionals should clarify these issues with legal authorities in their own states.

Do Birth Parents Have Access to Medical Information for Their Children in Foster Care?

Most birth parents may have access to medical information for their children or adolescents in foster care. Health care professionals are advised to contact agencies to clarify whether an individual birth parent may have access.

- For birth parents whose children or adolescents are in voluntary placement, health care professionals may, and should, share medical information with the birth parents. Exceptions to sharing information with birth parents exist in some states. Health care professionals are advised to check with state legal authorities about rules in their own states. The following are noted exceptions to information sharing with birth parents:
 - A major exception is for HIV-related information in the case of minors with the capacity to consent. This information may only be disclosed to birth parents with the written consent of the minor with capacity to consent.
 - For minors with the capacity to consent, information related to family planning, reproduction, sexually transmitted diseases, and substance abuse may not be shared with anyone without the consent of the minors. This includes birth parents, case-worker staff, and foster parents.
 - For children in involuntary placement for whom birth parents retain guardianship, health care professionals are advised to seek counsel from the foster care agencies about the sharing of medical information.

- Once children or adolescents are freed for adoption, health care professionals are not to share any information with birth parents.

Do Other Professionals, Such as Attorneys and Court-appointed Special Advocates, Have Access to Health Information for Children and Adolescents in Foster Care?

Attorneys and court-appointed special advocates only have access to confidential medical information for children or adolescents in foster care through

- Subpoena
- Written consent of those persons authorized to consent on behalf of the children or adolescents

Human immunodeficiency virus–related information may not be released to these individuals unless specifically requested in the subpoena or authorized in the consent.

Privileged mental health information (ie, that information shared between a therapist and client) cannot be released to anyone except by a judicial court order specifically requesting the information. Health care professionals should seek guidance from administrative, legal, or health care management personnel at the agencies.

In Cases in Which Children or Adolescents Are Referred to Other Health Care Professionals for Health-related Issues, How Much Information Should Be Shared With Those Individuals?

When children or adolescents are referred to other health care professionals, medical history and other information that is relevant and sufficient to the health care of these children should be provided. Situations in which information sharing becomes necessary for the purposes of diagnosis and treatment include referrals to medical subspecialists and mental health, developmental, and educational professionals performing evaluations. Health care professionals must weigh the right to privacy against sharing information to facilitate care for these children.

Bibliography

Feierman J, Lieberman D, Schissel A, Diller R, Kim J, Chu Y. *Teenagers, Health Care & the Law: A Guide to the Law on Minors' Rights in New York State*. New York, NY: New York Civil Liberties Union, Reproductive Rights Project; 2002

Lieberman D. *The Rights of Pregnant & Parenting Teens: A Guide to the Law in New York State*. New York, NY: New York Civil Liberties Union, Reproductive Rights Project; 2000

