

# Confidentiality

for Adolescents Seeking SUD Treatment

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**treat ME**

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**Opioid  
Response  
Network**



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# Working with communities. Contact the Opioid Response Network

- ✦ The SAMHSA-funded *Opioid Response Network (ORN)* assists states, organizations and individuals by providing the resources and technical assistance they need locally to address the opioid crisis and stimulant use.
- ✦ Technical assistance is available to support the evidence-based prevention, treatment and recovery of opioid use disorders and stimulant use disorders.
- ✦ The *ORN* provides local, experienced consultants in prevention, treatment and recovery to communities and organizations to help address this opioid crisis and stimulant use.
- ✦ *ORN* accepts requests for education and training.
- ✦ Each state/territory has a designated team, led by a regional Technology Transfer Specialist (TTS), who is an expert in implementing evidence-based practices.

✦ To ask questions or submit a request for technical assistance:

 Visit [www.OpioidResponseNetwork.org](http://www.OpioidResponseNetwork.org)  Email [orn@aaap.org](mailto:orn@aaap.org)  Call 401-270-5900



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# Disclosures

- ✦ None
- ✦ No discussion of off-label products



# This presentation will help you...

1. Identify clinical situations wherein adolescents have the right to confidential health care.
2. Describe confidentiality to adolescents.
3. Understand the differences between 42 CFR Part 2 and HIPAA



# What is an adolescent?



## ✧ As defined by the state of Maine:

- **Minor.** “Minor means a person under 18 years of age”
- No lower age limit is defined

Source: MRS Title 22, Chapter 260. CONSENT OF MINORS FOR HEALTH SERVICES. [title22ch260.pdf](#)  
([maine.gov](#))

Image Source: Microsoft Stock Image





Parents generally have legal rights and responsibility to make medical decisions for their minor children.



# Parent Consent Not Required for:

## (The Minor May Consent)

- ✓ **Collection of evidence through a sexual assault forensic examination**
- ✓ **Treatment for Sexually Transmitted Infection**
- ✓ **Treatment for emotional/psychological problems**
- ✓ **Emancipated Minors**
- ✓ **Treatment for Substance Use Disorder**
  - “Substance use” means the use of drugs or alcohol solely to induce a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and *not as a therapeutic agent recommended by a practitioner in the course of medical treatment.*



# A minor can consent to all medical, mental, dental and other health counseling and services if they are:

- ✦ Living separately and independently of parent support and have appropriate legal documentation (from attorney, agency that serves homeless children)
- ✦ Part of temporary/final order of protection against parent
- ✦ Married
- ✦ In Armed Forces
- ✦ Emancipated by the court

Source: MRS Title 22, Chapter 260. CONSENT OF MINORS FOR HEALTH SERVICES. [title22ch260.pdf](#)  
([maine.gov](#))







# Describing Confidentiality

Will you tell my parents...

# 4 Points to Cover when Describing Confidentiality:

1. Define what the word “confidential” means
2. Describe what parts of the medical visit are confidential
3. Explain exceptions to confidentiality
4. Explain how you will break confidentiality, if needed.



"When we talk about topics like **sex, drugs, and your feelings**, our conversation is **confidential**. This means that what we talk about is between you and me and I won't tell other people, such as your parents, unless you want them to know.

**An exception to this** is if I am you are being hurt or abused or am concerned you are at **serious risk of getting hurt, hurting yourself or someone else**.

In these situations, I would have to talk to other adults, but **I would talk to you first** so we could figure out how to handle it."





# **Confidentiality within federally-assisted SUD treatment programs**

## **(Part 2 entities)**

# 42 CFR Part 2

- ✧ Federal regulation
- ✧ Imposes restrictions upon the disclosure (i.e., protects the confidentiality) of substance use disorder patient records which are maintained in connection with the performance of any **Part 2 program**.



# Does CFR Part 2 apply to me?

## Part 2 Programs

- ✦ Provide alcohol or drug diagnoses, treatment or referral for treatment
- ✦ Receive federal funds
- ✦ Are tax exempt; or
- ✦ Authorized to conduct business by the federal government (opioid treatment program, Medicare provider etc.)

## non-Part 2 Programs

- ✦ Covered under HIPAA
- ✦ Typically include primary care, emergency department and medical hospital services.



# Confidentiality & Part 2 Entities



- In federally-assisted SUD treatment programs in states not requiring parental consent for SUD treatment:
  - 42 CFR Part 2 requires written consent for disclosure of patient identifying information
  - Written consent from minor required for:
    - Disclosure of SUD treatment to parents
    - Disclosure of drug test results to parent

[eCFR :: 42 CFR 2.14 -- Minor patients.](#)



# Part 2 Entities may disclose PHI to parents if:

1. A minor lacks capacity because of an extreme mental or physical condition
2. There is a serious threat to the incompetent minor's life or physical well-being
3. The threat can be diminished by disclosure to the parents.







## **Confidentiality & non- Part 2 Entities**

# Non-Part 2 entities are covered by HIPAA

- ✦ If child able to consent to their own treatment per state law, HIPAA **does not** give parents an automatic right to access information about that treatment.



Source: [When Your Child, Teenager, or Adult Son or Daughter has a Mental Illness or Substance Use Disorder, Including Opioid Addiction: What Parents Need to Know about HIPAA \(hhs.gov\)](#)

# CURES Act and Adolescent Confidentiality

- ✧ The 21st Century Cures Act allows patients to directly access their PHI via online portals.
- ✧ Providers should be familiar with how the CURES Act is applied to adolescents within their practice setting

Image Source: Microsoft Stock Image

Source: Carlson J, Goldstein R, Hoover K, Tyson N. NASPAG/SAHM Statement: The 21st Century Cures Act and Adolescent Confidentiality. J Adolesc Health. 2021 Feb;68(2):426-428. doi: 10.1016/j.jadohealth.2020.10.020. PMID: 33541602.

# Approach to Confidentiality with the CURES Act

- ✦ **Make every effort to involve parents**
- ✦ **Collaborate on Open Notes**
  - Work together to craft accurate and non-judgmental language around sensitive information in the chart
  - Always document medically relevant information.
- ✦ **If you suspect a parent/other person may be able to access the adolescent's health information via the online portal:**
  - Explain this potential breach of confidentiality to the adolescent
  - Determine whether adolescent patient requests that note NOT be shared/sharing note would cause harm to the patient



# Threats to Confidentiality in SUD Care

- ✦ Billing and Insurance Claims Process/Explanation of Benefits
- ✦ Front desk and scheduling procedures
- ✦ Patient PHI in online portals that can be accessed by parents



Image Source: Microsoft Stock Image



Ip W et al. Assessment of Prevalence of Adolescent Patient Portal Account Access by Guardians. JAMA Netw Open. 2021 Sep 1;4(9):e2124733. doi: 10.1001/jamanetworkopen.2021.24733. PMID: 34529064; PMCID: PMC8446820



**How do I know when  
to break  
confidentiality?**

# Ask yourself :

Is this a medical emergency?

Is there a serious threat to the minor's life or physical well-being?



# What is a serious threat to a minor's life/well-being?

✦ **Based on clinical judgement**

✦ **Examples of scenarios wherein the clinician may consider breaking confidentiality:**

- With any concern of suicidality
- Fentanyl use?? → due to risk of overdose
- Driving under the influence of alcohol or drugs → due to risk of motor vehicle crash injury/death
- Exchanging sex for drugs → due to risk of violence/injury/coercion
- Heavy use of substances in young adolescent

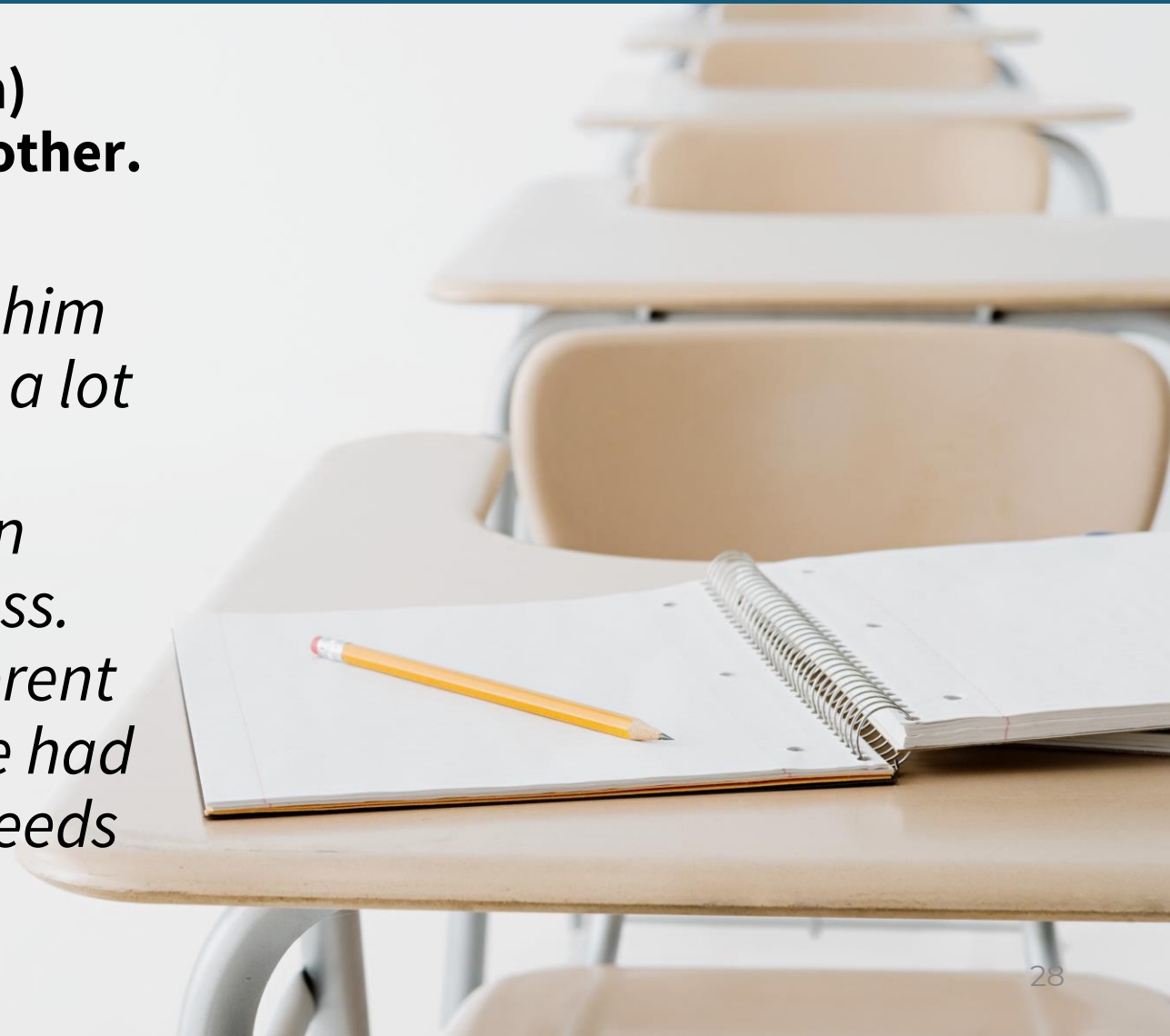




# Conner

**12 y.o. male (he/him)  
presents with his mother.  
His mother reports:**

*“The school wants him checked, he sleeps a lot in class and seems overwhelmed when asked to talk in class. They think it's different than the anxiety he had last year, and he needs to be checked”*



# Conner

**You meet with Conner alone, and ask about his anxiety and any coping strategies: Conner reports:**

*“I sniff Sharpies when I feel panicky, but my parents don’t know. I have to do it everyday in school to stay calm, but it’s **a secret**, I don’t want my parents to know - they won’t get it”*



# How do I break confidentiality?

- ✦ Explore child's reasons for keeping a secret and explains that healthcare providers cannot keep secrets about safety.
- ✦ Stress your concerns for the adolescent's health and safety.
- ✦ Describe how involving parents can be helpful for the child, and you will help them talk to their parents



# How do I break confidentiality?

- ✦ Decide whether to break confidentiality
  - Based on clinical judgement
- ✦ Ideally notify the adolescent that you are informing an adult of their behaviors and ask how they would like parent informed
  - With family meeting (parent and child together)
  - With parent alone
- ✦ Notify parent/guardian and work with them to protect the safety of the child
- ✦ Document reasons for breaking confidentiality in the medical chart



# The Divorce

**Alyssa is a 15-year-old female who is brought to your office by her father who is requesting drug testing.**



*Father: “She won’t talk to me, and her mom lets her do anything. I asked her to do a drug test and she won’t- can you just test her and **keep this conversation confidential**”.*

**Alyssa is currently visiting her father, and usually lives with her mother. Her parents are in the process of getting a divorce.**

# How do I address parent request for confidentiality?

- ✦ Confidentiality is maintained between a provider and their patient (the adolescent)
- ✦ Potential Strategies:
  - Explore parent's reasons for requesting confidentiality
  - Explain that drug testing cannot be obtained without voluntary consent (except in cases of medical, behavioral or psychiatric emergencies)
  - In general, adolescents need to know why they are being asked to submit a drug test in order to provide informed consent
  - Assure parent you will inform them if there is any serious threat to child's well-being or safety
  - Assess adolescent alone and determine whether drug testing is necessary.
- ✦ Note: Involuntary testing in an adolescent who is capable of providing informed consent is not approved or recommended by the American Academy of Pediatrics .



# Summary

- ✦ Adolescents (defined as minors under the age of 18) generally have the right to seek confidential care around the diagnosis and treatment of SUDs
- ✦ In Maine, adolescents cannot independently consent to medications for the treatment of SUD
- ✦ Most pediatricians are considered non-Part 2 covered entities
  - Be familiar with how HIPAA and the CURES Act is applied to adolescents with substance use-related problems within their practice setting



# You have an obligation to protect the adolescent's rights to confidentiality

For more info:

[www.guttmacher.org](http://www.guttmacher.org)

[www.cahl.org](http://www.cahl.org)

[Legislature.maine.gov](http://Legislature.maine.gov)

## Selected References:

Carlson J, Goldstein R, Hoover K, Tyson N. NASPAG/SAHM Statement: The 21st Century Cures Act and Adolescent Confidentiality. *J Adolesc Health*. 2021 Feb;68(2):426-428. doi: 10.1016/j.jadohealth.2020.10.020. PMID: 33541602.

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