Adolescent & Young Adult Health Care in Vermont

A Guide to Understanding Consent & Confidentiality Laws

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Adolescent & Young Adult Health National Resource Center

The National Adolescent and Young Adult Health National Resource Center (AYAH-NRC) – supported by the Maternal and Child Health Bureau (MCHB) – was established in September 2014 to help states improve receipt and quality of preventive services among adolescents and young adults. The AYAH-NRC is housed at the National Adolescent and Young Adult Information Center (NAHIC) at the University of California, San Francisco, in close partnership with: the Association of Maternal & Child Health Programs (AMCHP); the University of Minnesota State Adolescent Health Resource Center (SAHRC); and the University of Vermont National Improvement Partnership Network. The Center aims to promote adolescent and young adult (AYA) health by strengthening the abilities of State Title V MCH Programs, as well as public health and clinical health professionals, to better serve these populations (ages 10-25).

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The Center for Adolescent Health & the Law supports laws and policies that promote the health of adolescents and young adults and their access to comprehensive health care. Working nationally, the Center clarifies the complex legal and policy issues that affect access to health care for the most vulnerable youth in the United States. The Center provides information and analysis, publications, consultation, and training to health professionals, policy makers, researchers, and advocates who are working to protect the health of adolescents and young adults.

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Adolescent & Young Adult Health Care in Vermont
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This guide provides a summary of legal health care consent requirements and confidentiality protections for adolescents and young adults in Vermont to inform health care providers and promote access to essential health care including preventive health services.

Introduction

Confidentiality protections encourage adolescents and young adults to seek the health care they need and safeguard their privacy when they receive services. The relationship between confidentiality of health information and consent for health care is important. The specific ways the law protects confidentiality depend on whether a patient is a minor or an adult and whether the patient can legally consent to their own care. Some adolescents are minors—under age 18—and some are young adults—age 18 or older.

Young adults almost always may consent to their own care; minors may consent sometimes, but not always. Young adults are entitled to the same confidentiality protections under state and federal laws as other adults.

"Minor consent laws" allow minors to consent for their own care in specific situations and for specific services. Laws authorizing minors to consent and laws protecting confidentiality are closely linked but they do not always match each other. Adolescent minors who consent for their own care are entitled to many confidentiality protections; but these may be qualified or limited in ways that allow for disclosure of some information to parents or others.

Numerous federal and state laws contain confidentiality protections for health information. The interplay of law and ethics also is important in understanding confidentiality in the health care of adolescents and young adults. Careful analysis of the relevant state and federal laws, informed by sound ethical principles, can clarify these issues in Vermont as in other states.

Importance of Protecting Confidentiality

There are numerous reasons to protect confidentiality for the health care communications and health information of adolescents and young adults. The most compelling is to encourage young people to seek necessary care on a timely basis and to provide a candid and complete health history when they do so. Additional reasons include supporting their developing sense of privacy and autonomy as well as protecting them from the humiliation and discrimination that can result from disclosure of confidential information. Offering confidential care can also help young people develop their capacity to engage independently with the health care system. Decades of research findings have documented the importance of privacy concerns for young people in the adolescent age group; additional research has found similar concerns among young adults. Overarching goals of confidentiality protection include promoting both the health of individual young people and the public health. One key element of reaching these goals is ensuring that young people receive the health care services they need.

Privacy concerns influence use of health care in many ways. Many adolescents are concerned about disclosure to their parents of information related to sexual behaviors, substance use, and mental health. This is true even though many adolescents voluntarily share a lot of health information with their parents and other trusted adults. Voluntary communication can be very helpful in supporting adolescents' and young adults' health; mandated communication and disclosure can be counterproductive unless they are necessary to protect the health of a young person. Specifically, concerns about confidentiality and disclosure can affect whether adolescents seek care,[1,2,3] where they seek care,[4,5] and how openly they talk with health care professionals.[6] Some young adults also hesitate to use certain services unless privacy can be maintained.[7] Concerns that confidentiality will not be protected can lead adolescents and young adults to forego or delay care or to be less than candid when they do see a health care provider. Over the past 25 years, many studies of confidentiality have been conducted exploring the perspectives of adolescents, health care providers, and parents. (See Appendix G)

Rationale for confidentiality
- Protect health of adolescents & young adults
- Protect public health
- Promote positive health behaviors & outcomes
- Avoid negative health outcomes
- Encourage adolescents & young adults to seek needed care
- Increase open communication with health care providers

Research findings about privacy concerns
Privacy concerns affect behavior and influence:
- Whether young people seek care
- When young people seek care
- Where young people seek care
- How openly young people talk with health care providers

The effect of privacy concerns has been especially well documented with respect to adolescents' use of sexual health services, including care related to contraception, pregnancy, and sexually transmitted diseases (STDs). For example, one study found that almost all adolescents would consent to STD testing if their parents would not know, but only about one third would agree if their parents would or might know.[8] According to another study, nearly one half of adolescents would stop using family planning clinic services if parental notification were mandatory.[9] Yet, a national survey found that only a very small minority of adolescents would stop having sex if parental notification were mandatory for contraceptives, and a significant percentage would have riskier sex.[10]

Health care professional organizations recognize the importance of confidentiality protections in health care. These organizations have adopted codes of ethics and issued policies that address privacy and confidentiality protections for patients generally, including young adults and adolescents. [11] They also have adopted policies related to adolescent health care that address confidentiality for particular health care settings, special populations, and specific services—preventive health care, testing & treatment for STDs & HIV, contraception, pregnancy-related care, and other reproductive health services. These policies often speak to the importance of informing patients, including adolescents and their parents, about confidentiality and its limits.

Health care professional organizations
Codes of ethics and policies support:
- Rationale for confidentiality
- Scope of confidentiality and its limits
- Confidentiality in particular health care settings
- Confidentiality for specific populations of adolescents
- Confidential access to specific health services

Confidentiality is not absolute. To understand the scope and limits of legal and ethical confidentiality protections, it is important to clarify: what *may not* be disclosed because it is confidential and none of the exceptions to confidentiality apply; what *may* be disclosed based on the discretion of the health care professional; and what *must* be disclosed because there is another requirement, such as a reporting requirement, that overrides confidentiality.

Confidentiality is not absolute
Confidential information must be disclosed:
- To comply with reporting mandates
  - Child abuse
  - Communicable disease
  - Assaults such as knife or gunshot wounds
  - Domestic violence
- When a patient is dangerous to self or others

Emerging Confidentiality Challenges

Two sets of issues represent increasing challenges for protecting confidentiality in adolescent and young adult health care. The first set comprises the issues associated with billing and health insurance claims, particularly the use of explanations of benefits (EOBs) to communicate with health insurance policyholders. [12,13] The second relates to the complex questions associated with use of and access to electronic health records (EHRs) and web portals.[14,15,16] In these arenas, laws and policies as well as best practices are evolving rapidly. Thorough discussion of these issues is beyond the scope of this guide but considering them is essential in any effort to protect confidentiality for adolescents and young adults. (See Appendix E)

VERMONT HEALTH CARE CONSENT LAWS

The age of majority in Vermont is 18; anyone younger than age 18 is legally a minor. Young adults age 18 or older are allowed to consent for their own health care; their right to consent may be limited if they are cognitively impaired and unable to give informed consent. For adolescents who are minors, the consent of a parent or another authorized adult is generally required. Special requirements apply when minors are in foster care or under court jurisdiction.[17] Many exceptions to the parent consent requirement are contained in Vermont's "minor consent laws." (See Table 1 and Appendix A)

Minor Consent Laws in Vermont

Vermont has laws authorizing some minors to consent for health care based on their status. These laws allow emancipated minors to consent for their own care; married minors and minors who are on active military service are considered emancipated.[18] Vermont also allows minors who are age 16 or older, living apart from their parents, and self-sufficient, and meet other criteria to obtain a court order of emancipation. Emancipated minors are considered adults for all purposes, including consenting to health care. Minors who are not explicitly authorized to consent for all of their own care based on their status may nevertheless be able to do so for specific services.

Linkage of consent & confidentiality
"Consent" & "confidentiality" are not perfectly matched but are closely linked in:
- Clinical practice
- Ethical standards
- Professional policies
- State & federal laws

Vermont has several laws either allowing minors to receive certain services without prior parental consent or authorizing them to consent for specific health care services, including some preventive services. In particular these laws cover emergency care, STD care, nonmedical outpatient or inpatient treatment for drug dependency or alcoholism, and outpatient and inpatient mental health treatment.[19] Vermont law also provides for "expedited partner therapy" or EPT, that allows STD prescription to a patient's partner.[20]

Although Vermont does not have an explicit law authorizing minors to consent for contraception, they may do so for family planning services funded by Title X or Medicaid and should be able to do so in other settings based on the constitutional right of privacy (see Table 1 and Appendix A). Minors may also access emergency contraception without parental consent.[21] According to interpretations of Vermont law contained in a guide published by the Vermont Medical Society, minors of any age may consent for HIV/AIDS care, contraception, prenatal, delivery, and other pregnancy care, as well as medical treatment associated with rape, incest, or sexual abuse, provided they are capable of giving informed consent (see Table 1 and Appendix A).[22]

Minors in Special Situations

Some adolescent minors are in special situations or have health care needs that are not clearly addressed by the Vermont minor consent laws. These include, for example, adolescents who are victims of sexual assault or human trafficking, or LGBTQ youth. Even though the state's minor consent laws do not explicitly provide for these adolescents to consent for specific services such as care for sexual assault or transgender services, they are able to consent—on the same basis as any other minor—for other services that are covered by the minor consent laws or other laws, such as care for STDs and HIV, contraception, substance abuse services, and mental health counseling in some circumstances. Often these services are relevant to their special situations.

VERMONT CONFIDENTIALITY LAWS

Vermont laws include protections for the health care information of individuals of all ages, including minor adolescents and young adults.[23, 24] Vermont laws generally provide confidentiality protection for medical records and patients' health information and usually require consent for release of the records or disclosure of the information subject to certain exceptions. Vermont law incorporates the federal HIPAA Privacy Rule for disclosure of protected health information,[25] but also includes stronger protections. Vermont laws also contain provisions that are specific to the confidentiality of minors' health information, particularly with respect to parents' access to that information. (See Tables 1 and 2 and Appendix B)

Confidentiality Laws for Minors in Vermont

Confidentiality protections and consent requirements for minors are closely linked but not perfectly matched. Generally, when minors may consent for their own health care they can expect confidentiality protection, but there are exceptions. The Vermont laws that allow minors to consent for their own health care also require a physician to notify parents if a minor has consented for inpatient treatment of STDs or drug or alcohol dependency and requires immediate hospitalization.[26] (See Table 1 and Appendix A) Also, confidentiality may be compromised via billing and health insurance claims as well as through access to electronic health records via web portals. (See Appendix E)

One of the main exceptions to confidentiality is the requirement to report child abuse. In Vermont, a broad range of health care professionals are required to report reasonable suspicions that a child has been abused. The Vermont definition of reportable abuse includes physical and emotional abuse by a parent or person responsible for the child and sexual abuse by any person.[27,28,29] (See Appendix F) A related concern of health care professionals is the age at which minors can participate in sexual activity without risk of criminal prosecution—sometimes referred to as "age of consent"—is legally separate from the requirement to report child abuse; a detailed discussion is beyond the scope of this guide.[30]

These Vermont laws must be interpreted and applied in the context of the full range of federal laws that protect confidentiality and sometimes supersede state laws. (See Tables 2 and 3 and Appendix B) Important federal confidentiality laws include the HIPAA Privacy Rule, as well as legal requirements for numerous federally funded health programs. Because the HIPAA Privacy Rule defers to state laws and other applicable laws on the question of when parents have access to their adolescent minor children's health information, understanding the relationship between state and federal laws is essential.

Federal Confidentiality Laws

Numerous federal laws contain confidentiality protections. These laws protect patients' privacy in the health care system and the confidentiality of their health information. Federal confidentiality laws that are of particular importance for adolescent and young adult health care include the HIPAA Privacy Rule and FERPA, as well as statutes and regulations for the Title X Family Planning Program and Medicaid, and the rules for drug and alcohol programs. Confidentiality protections can also be found in requirements for other programs such as the Ryan White HIV/AIDS Program and federally qualified health centers (FQHCs). (See Tables 2 and 3 and Appendix B)

Legal sources of confidentiality protection

- Constitutional right of privacy
- HIPAA Privacy Rule
- Federal education privacy laws
- Federal & state funded health program requirements
- State minor consent laws
- State medical confidentiality & medical records laws
- Evidentiary privileges
- Professional licensing laws

HIPAA Privacy Rule

The HIPAA Privacy Rule—the federal medical confidentiality regulations issued in 2002 under the Health Insurance Portability and Accountability Act—protects the health care information of adolescents and young adults.[31] The HIPAA privacy protections for young adults are the same as for other adults: they are entitled to access their protected health information and to control the disclosure of that information in some circumstances. Additional specific requirements apply to the information of adolescents who are minors.

When minors are authorized to consent for their own health care and do so, the HIPAA Privacy Rule treats them as "individuals" who are able to exercise rights over their own protected health information (PHI).[32] Also, when parents have acceded to a confidentiality agreement between a minor and a health professional, the minor is considered an "individual" under the Rule.[33]

Generally, the HIPAA Privacy Rule treats parents as the "authorized representative" and gives them access to the health information of their unemancipated minor children, including adolescents. Parents' access is limited in situations that involve abuse or endangerment or when it would not be in the minor's best interest.[34] However, when minors are considered "individuals," their parents are not necessarily their authorized representative. On the issue of when parents may have access to protected health information for minors who are considered "individuals" and who have consented to their own care, the Rule defers to other laws. Parents' access to their adolescent minor child's information in these circumstances depends on "state or other law."[35]

Thus, a health care provider must look to state laws or other laws to determine whether they specifically address the confidentiality or disclosure of a minor's health information. State or other laws that explicitly require, permit, or prohibit disclosure of information to a parent are controlling.[36] If state or other laws are silent on the question of parents' access, a health care professional exercising professional judgment has discretion to determine whether or not to grant access.[37] The relevant sources of state or other law that a health care provider must consider include all of the state and federal laws that contain confidentiality protections.

Additional provisions of the HIPAA Privacy Rule that are important for both adolescents and young adults are those that allow individuals to request restrictions on the disclosure of their PHI and to request that communications regarding their PHI occur in a confidential manner.[38] Other protections address situations in which disclosure may be restricted to protect individuals who may be at risk for domestic violence or child abuse.[39]

FERPA

When health care services are provided in a school setting, the legal framework for consent to treatment for adolescents remains generally the same as in other settings; however, different confidentiality rules may apply. In a school setting, the HIPAA Privacy Rule requirements must be understood in relation to the requirements of the Family Educational Rights and Privacy Act (FERPA), a federal statute that, with its implementing regulations, controls the disclosure of the educational records of students at most primary, secondary, and post-secondary schools.[40] Health care professionals who provide services in schools often are uncertain whether they must follow the HIPAA Privacy Rule or FERPA. Two federal agencies—the Department of Health & Human Services and the Department of Education—have issued joint guidance that provides some clarification.[41]

While the HIPAA Privacy Rule typically controls release of health information created by health care professionals, the HIPAA Privacy rule explicitly *excludes* from its purview health records that are part of an "education record" as that is defined under FERPA.[42] FERPA defines "education record" in a way that sometimes can include health records created by a health care provider—such as a school nurse—employed by or acting on behalf of a school or university.

Thus, health records created by medical professionals employed by a school or university may be part of an "education record" and subject to FERPA rather than HIPAA. The most important implication of this is that parents have access to the education records of their minor children. Young adults, beginning at age 18, control access to their own education records under FERPA, including any health information. Health records created by medical professionals working in a school setting such as a school-based health center but employed by a health entity would usually be covered by HIPAA, not FERPA.[43]

Title X Family Planning

The confidentiality regulations for the federal Title X Family Planning Program[44] are exceptionally strong and have protected adolescents as well as adults for nearly five decades. Federal Title X confidentiality protections take precedence over state requirements for parental consent or notification, allowing minors to receive family planning services at Title X sites without parental involvement.[45] The regulations require that all information about individuals receiving services must be confidential and must not be disclosed without the individual's documented consent, except as necessary to provide services to the patient or as required by law—and, even then, only with appropriate safeguards for confidentiality.[46] When information is shared by Title X providers with other health care providers, care must be taken to understand the extent to which those other providers are bound by similar confidentiality requirements. Examples of disclosures that are often required by law include mandatory reporting of child abuse to child welfare or law enforcement,[47] intimate partner violence to law enforcement,[48] and STDs to public health authorities.[49] In each of these situations, other specific confidentiality rules may apply.

Medicaid

Federal Medicaid law contains safeguards against disclosure of confidential information.[50] It also requires that Medicaid cover family planning "services and supplies" for all Medicaid enrollees of childbearing age, including "minors who can be considered to be sexually active.[51] These protections have been interpreted to provide significant protection for confidential access to family planning services for minors.[52] State laws and policies also contain varied provisions that help to protect the privacy of Medicaid beneficiaries and their confidential health information. These provisions include both general confidentiality requirements and specific confidentiality protections for information related to family planning services, such as through states' Medicaid family planning expansions that include coverage for minors as well as young adults.[53]

Drug and Alcohol Programs

Federal regulations—contained in 42 CFR Part 2 and often referred to as "Part 2"—establish special confidentiality protections for substance use disorder information and records;[54,55] they apply to "substance use disorder programs" that meet certain very broad criteria of being "federally assisted."[56] The regulations protect both adolescent minors and young adults. When minors are allowed to consent for treatment under state law, they have independent rights under the federal regulations.[57] For those providers and programs that must comply with the federal rules, the regulations impose strict confidentiality requirements that do not allow disclosure without the consent of the patient except in specific circumstances that pose a substantial threat to the life or physical wellbeing of the patient or another person.[58] To the extent that these federal regulations are more protective of confidentiality, they take precedence over state law; if they are less protective, state law controls.[59]

Ryan White HIV/AIDS Program

The Ryan White HIV/AIDS Program (Ryan White) supports some medical services for patients with HIV.[60] Ryan White generally is a payer of last resort and fills the gaps for individuals with HIV who have no other source of coverage or face coverage limits. Ryan White service providers and patients have significant concerns about

confidentiality, but like other federal funding programs such as Title X, the Ryan White law includes strong and explicit confidentiality protections.[61]

Federally Qualified Health Centers

Federally qualified health centers (FQHCs) funded under Section 330 of the Public Health Service Act,[62] also frequently referred to as "community health centers," often provide services for adolescents and young adults. For example, some FQHCs operate school-based health centers. FQHCs also are required to provide preventive health services, including voluntary family planning services and many of the preventive services recommended for adolescents and young adults;[63] and some FQHCs receive Title X funds to help provide family planning services. FQHCs are required to maintain the confidentiality of patient records[64] and, if they receive Title X Family Planning funds, to comply with Title X confidentiality regulations. The confidentiality regulation for FQHCs[65] contains language almost identical to the Title X confidentiality regulations.[66]

CONFIDENTIALITY AND PREVENTIVE SERVICES

Recommended preventive services for adolescents & young adults
The U.S. Preventive Services Task Force (USPSTF) and Bright Futures have recommended clinical preventive services for adolescents and young adults in each of these categories:

- substance use
- sexual and reproductive health
- mental health
- nutrition and exercise
- immunizations
- safety and violence

In each category, the specific services recommended by the USPSTF vary for adolescents and for young adults; in Bright Futures the recommendations are for ages 11-21. The AYAH National Resource Center has issued a fact sheet on "Evidence-Based Clinical Preventive Services for Adolescents and Young Adults" that sets out the specific services recommended for the different age groups in each category.[67]

Many of the preventive services recommended for adolescents and young adults fall into categories about which young people have privacy concerns. These include at least some services in all recommended areas of prevention. Sometimes the privacy concerns are associated with a visit for a specific purpose, such as family planning; on other occasions concerns about confidentiality arise when sensitive issues, such as STDs, HIV, or substance use, are addressed during a well visit.

Not all preventive services raise heightened privacy concerns for adolescents and young adults; but when they do, it is important to understand when confidentiality can—and when it cannot—be assured. For young adults, who are able to consent to their own care and are entitled to the same confidentiality protections as other adults, any preventive health service they receive should be treated as confidential, meaning that information usually should not be disclosed to parents or others without their permission. For minor adolescents, if they are

allowed to consent for their own care under the Vermont minor consent laws, they can usually expect confidentiality, subject to any disclosures that are specifically permitted or required by law. For both adolescents and young adults, other legal and ethical disclosure obligations, such as when a patient is dangerous to self or others, must be considered. There are no specific confidentiality requirements for preventive services; the extent of confidentiality protection depends on the service as well as the age and other characteristics of the young person.

CONCLUSION

Confidentiality in adolescent and young adult health care is an important element in protecting the health of individual young people and the public health. Decades of research have found that privacy protection encourages young people to seek essential health care and speak openly with their health care providers. Many state and federal laws as well as ethical guidelines require confidentiality protection and support the rights of adolescents and young adults to receive confidential health care including many preventive health services.

TABLE 1: VERMONT HEALTH CARE CONSENT LAWS FOR MINORS*

Vermont Health Care Consent Laws for Minors Based on Status			
Status	**Minor Consent**	**Scope/Limitations**	**Citations**
Age of majority†	< 18 – No ≥ 18 – Yes	Age of majority is 18	Vt. Stat. Ann. tit. 1, § 173
Emancipated minor	Yes	An emancipated minor is considered an adult for all purposes	Vt. Stat. Ann. tit. 12, § 7156
Married minor	Yes	A married minor is emancipated	Vt. Stat. Ann. tit. 12, § 7151
Minor in military service	Yes	A minor on active duty with the military is emancipated	Vt. Stat. Ann. tit. 12, § 7151
Vermont Health Care Consent Laws for Minors Based on Services			
Service	**Minor Consent**	**Scope/Limitations**	**Citations**
Emergency services	Yes, with limitations	Treatment may be provided without prior consent when immediate treatment is needed to save the patient's life or health	Vt. Stat. Ann. tit. 12, § 1909(b)
Contraceptives/ family planning	Yes	A minor who is capable of giving informed consent may obtain contraceptive medications and devices without prior parental consent (Note: See Table 2 re Title X Family Planning)	Constitutional law; Vermont Medical Society, Vermont Guide to Health Care Law
STDs/HIV/AIDS care	Yes	A minor age 12 or older may consent for medical treatment and hospitalization for STDs, including HIV and AIDS (Note: See Table 2 re Title X Family Planning)	Vt. Stat. Ann. tit. 18, § 4226; Vermont Medical Society, Vermont Guide to Health Care Law
Pregnancy care	Yes	A minor who is capable of giving informed consent may do so for pregnancy related care including termination, prenatal care, and delivery	Constitutional law; Vermont Medical Society, Vermont Guide to Health Care Law
Mental health – inpatient	Yes	A minor age 14 or older may consent for inpatient mental health treatment	Vt. Stat. Ann. tit. 18, § 7503
Mental health – outpatient	Yes	A minor of any age may consent to outpatient mental health treatment including psychotherapy and other counseling services but not prescription drugs	Vt. Stat. Ann. tit. 18, § 8350
Alcohol/drug abuse	Yes	A minor age 12 or older may consent for nonmedical inpatient or outpatient treatment for drug dependency or alcoholism	Vt. Stat. Ann., tit. 18, § 4226
Medical treatment for rape, incest, sexual abuse	Yes??	"Minors of any age may give informed consent to medical treatment associated with rape, incest, or sexual abuse"	Vermont Medical Society, citing Vt. Stat. Ann. tit. 33, §§ 4911 et seq.

* This table contains only brief summary information about the laws; more detailed information and selected excerpts of the laws are contained in Appendix A.

† Parent consent is generally required for minors under age 18 unless one of the exceptions in the health care consent laws for minors applies; young adults age 18 or older generally may consent for themselves.

TABLE 2: VERMONT & FEDERAL CONFIDENTIALITY LAWS FOR MINORS*

Vermont Confidentiality Laws for Minors		
	Scope of Protection/Limitations	**Citations**
Notice to parents	A physician must notify parents of a minor who has consented for treatment of STDs or drug or alcohol dependency if immediate hospitalization is required; notification is not explicitly required if the minor is not hospitalized (Note: See "Federal Confidentiality Laws" below for regulations for drug and alcohol programs)	Vt. Stat. Ann. tit. 18, § 4226
Child abuse reporting	Health care professionals must report reasonable suspicions that a child has been abused, including physical or emotional abuse by a parent or person responsible for the child or sexual abuse by any person	Vt. Stat. Ann. tit. 33, §§ 4912, 4913 (See Appendix F)
Victim of crime	Health care professionals are required to disclose information that a minor under age 16 has been the victim of a crime	Vt. Stat. Ann. tit. 12, § 1612(b)
Federal Confidentiality Laws for Minors†		
	Scope of Protection/Limitations	**Citations**
HIPAA Privacy Rule – minor as individual	A minor who consents to health care, or whose parent assents to confidentiality, is an "individual" with control over their own protected health information (PHI)	45 C.F.R. § 164.502(g)(3)
HIPAA Privacy Rule – parent as personal representative	Parents are not necessarily the personal representative when minors have consented to their own care; parent may not be personal representative if minor subject to domestic violence, abuse, neglect, or endangerment	45 C.F.R. § 164.502(g)(3) and (5)
HIPAA Privacy Rule – parents' access	Parents' access to PHI when minor is the "individual" depends on other state and federal laws; parents' access may be denied if health care professional determines it would cause substantial harm to minor or another individual	45 C.F.R. §§ 164.502(g)(3), 164.524(a)(3)(iii)
FERPA	Information about health services provided by a school may be included in a students' "education records" and subject to FERPA, not HIPAA; parents have access to minors' education records	20 U.S.C §1232g, 34 C.F.R. Part 99; 45 C.F.R. § 160.103
Title X Family Planning	Information about family planning services received at Title X funded sites is confidential and may only be disclosed with the minor's permission or if required by law	42 C.F.R. § 59.11
Medicaid	Adolescent minors who are eligible for Medicaid may receive confidential family planning services funded by Medicaid	42 U.S.C. §§ 1396a(a)(7), 1396d(a)(4)(C)
Drug & alcohol—"substance use disorder"—programs	In federally assisted programs, consent for disclosure must be obtained from minor who is authorized under state law to consent for alcohol or drug abuse treatment; disclosure to parents may occur only if minor lacks capacity for rational choice due to extreme youth, physical incapacity, or substantial threat to minor or another	42 C.F.R. § 2.14

* This table includes information about selected state and federal confidentiality laws that pertain to minors' health information. It contains only brief summary information about the laws; more detailed information is included in Appendix A and Appendix B.

† Many of these federal laws pertain to young adults as well as minors. See Table 3.

TABLE 3: VERMONT & FEDERAL CONFIDENTIALITY LAWS FOR YOUNG ADULTS*

Vermont Confidentiality Laws for Young Adults		
	Scope of Protection/Limitations	**Citation**
Disclosure of protected health information - HIPAA	HIPAA Privacy Rule provides minimum protections required	Vt. Stat. Ann. tit. 18, § 1881
Disclosure of health information or records - privilege	Health care professionals may not disclose patient's health information without authorization by patient or express provision of law (privilege for judicial proceedings)	Vt. Stat. Ann. tit. 12, § 1612
Medical records - access	Patients have a right to access their medical records	Vt. Stat. Ann. tit. 3, § 129a(a)(8), tit. 26, § 1354(a)(10)
Duty to warn	Mental health professionals have a duty to warn individuals within a "zone of danger" that a patient with dangerous propensities presents a risk of serious harm	Kuligoski v. Brattleboro Retreat et al., 203 Vt. 328 (2016)
Federal Confidentiality Laws for Young Adults		
	Scope of Protection/Limitations	**Citation**
HIPAA Privacy Rule - generally	Individuals have access to and some control over disclosure of their own protected health information (PHI)	45 C.F.R. §§ 502, 524, 528
HIPAA Privacy Rule – special confidentiality protections	Individuals may request restrictions on the disclosure of their PHI and that communications regarding their PHI occur in a confidential manner	45 C.F.R. §§ 164.502(h), 164.522(a)(1), and 164.522(b)(1)
FERPA	Information about health services provided by a school may be included in a students' "education records" and subject to FERPA, not HIPAA; parents do not have access to education records of young adults age 18 and older	20 U.S.C §1232g, 34 C.F.R. Part 99; 45 C.F.R. § 160.103
Title X Family Planning	Information about family planning services received at Title X funded sites is confidential and may only be disclosed with the patient's permission or if required by law	42 C.F.R. § 59.11
Medicaid	State Medicaid plans are required to include protections for confidentiality of applicants' and enrollees' information	42 U.S.C. § 1396a(a)(7)
Drug & alcohol—"substance use disorder"—programs	Consent for disclosure must be obtained from an individual who seeks treatment from a substance abuse disorder provider or program; disclosure without the patient's consent may occur only in very limited circumstances such as bona fide medical emergencies or with a court order	42 C.F.R. Part 2

* This table includes information about selected state and federal confidentiality laws that pertain to adults' health information, including the health information of young adults. It contains only brief summary information about the laws; more detailed information is included in Appendix B.

APPENDIX A: VERMONT HEALTH CARE CONSENT & CONFIDENTIALITY LAWS FOR MINORS

This appendix contains brief summaries of Vermont health care consent and confidentiality laws that apply to health services received by minors.

Minor Consent Based on Status

Age of Majority

Vt. Stat. Ann. tit. 1, § 173
The age of majority in Vermont is 18.

Emancipated Minor

Vt. Stat. Ann. tit. 12, § 7151
A minor who is age 16 or older, living apart from his or her parents, managing his or her own financial affairs, has demonstrated the ability to be self-sufficient, and meets other criteria may obtain a court order of emancipation.

Vt. Stat. Ann. tit. 12, § 7156
A minor who has a court order of emancipation is considered an adult for all purposes and would therefore be able to consent for medical care.

Married Minor

Vt. Stat. Ann. tit. 12, § 7151
A married minor is emancipated and considered an adult for all purposes and would therefore be able to consent for medical care.

Minor in the Military

Vt. Stat. Ann. tit. 12, § 7151
A minor who is on active duty with the U.S. Armed Services is emancipated and considered an adult for all purposes and would therefore be able to consent for medical care.

Minor Consent Based on Services

Emergency Services

Vt. Stat. Ann. tit. 12, § 1909(b)
Treatment may be provided without prior consent when immediate treatment is needed to save the patient's life or health.

Contraception/Family Planning

Note: Although Vermont does not have an explicit statute authorizing minors to consent for contraception or family planning services, they may do so for services funded by Title X or Medicaid and should be able to do so in other settings if they are able to give informed consent, based on the constitutional right of privacy and because Vermont does not have a law precluding them from doing so. See: Vermont Medical Society. Vermont Guide to Health Care Law. February 2017. http://www.vtmd.org/sites/default/files/VermontGuidetoHealthCareLaw2.28.17.pdf.

Note: Under FDA rules for emergency contraception, Plan B and its generic equivalents are available "over the counter" without a prescription for individuals of any age; Ella is available with a prescription. See: Kaiser Family Foundation. Emergency Contraception. August 2016. http://files.kff.org/attachment/emergency-contraception-fact-sheet.

Pregnancy Related Care

Note: Although Vermont does not have an explicit statute authorizing minors to consent for pregnancy-related care, including abortion, they may do so if they are able to give informed consent, based on the constitutional right of privacy and because Vermont does not have a statute precluding them from doing so. See: Vermont Medical Society. Vermont Guide to Health Care Law. February 2017. http://www.vtmd.org/sites/default/files/VermontGuidetoHealthCareLaw2.28.17.pdf.

STD/HIV

Vt. Stat. Ann. tit. 18, § 4226
A minor age 12 or older may consent for medical treatment and hospitalization for a venereal disease if the disease is verified by a physician. Note: This has been broadly interpreted in Vermont to cover STDs generally, including HIV and AIDS.

Drug/Alcohol Care

Vt. Stat. Ann. tit. 18, § 4226
A minor age 12 or older may consent for nonmedical outpatient or inpatient treatment for drug dependency or alcoholism at a program approved by the agency of human services.

Mental Health Services

Vt. Stat. Ann. tit. 18, § 7503
A minor age 14 or older may seek voluntary admission to an inpatient mental health facility.

Vt. Stat. Ann. tit. 18, § 8350
A minor may give consent to receive any legally authorized outpatient treatment from a mental health professional, including psychotherapy and other counseling services that are supportive, but not prescription drugs.

Rape, Incest, and Sexual Abuse

Note: Although there is not a Vermont statute that explicitly authorizes minors to consent for care related to sexual abuse or sexual assault, according to the Vermont Medical Society, "Minors of any age may give informed consent to medical treatment associated with rape, incest, or sexual abuse. Health care providers are required to report such incidents to the Department of Children and Families ("DCF") within 24 hours." See: Vermont Medical Society. Vermont Guide to Health Care Law. February 2017. http://www.vtmd.org/sites/default/files/VermontGuidetoHealthCareLaw2.28.17.pdf.

Confidentiality & Disclosure

Disclosure to Parents

Vt. Stat. Ann. tit. 18, § 4226
A physician must notify the parents of a minor if immediate hospitalization is required for treatment of STDs or drug dependency or alcoholism. Notification is not explicitly required when hospitalization is not required. This statute must be interpreted in relation to federal confidentiality laws including Title X and the federal drug and alcohol confidentiality rules.

Child Abuse Reporting

Vt. Stat. Ann. tit. 33, §§ 4911 et seq.
Health care professionals are required to report reasonable suspicions that a child has been abused. The Vermont definition of reportable abuse includes physical and emotional abuse by a parent or person responsible for the child and sexual abuse by any person. For additional detail about the specific requirements of the child abuse reporting law, see Appendix F.

APPENDIX B: FEDERAL CONFIDENTIALITY LAWS

This appendix contains brief summaries and excerpts of the text of selected federal statutes and regulations that provide confidentiality protection for health information and services provided to adolescent minors and young adults.

HIPAA Privacy Rule

The HIPAA Privacy Rule contains protections for both minors and young adults. In 45 C.F.R. § 160.502(g)(3) the rule specifies when a minor is considered an individual who has rights with respect to their own protected health information PHI and whose parent is not necessarily their personal representative with access to their PHI. In 45 C.F.R. § 160.502(g)(5) the rule specifies when a parent is not necessarily the personal representative of a minor due to abuse, neglect, domestic violence, or endangerment, or if it would not be in the minor's best interest. In 45 C.F.R. §§ 160.502(h) and 160.522 the rule specifies special confidentiality protections for individuals: the right to request restrictions on disclosure of PHI; and the right to request confidential communications.

45 C.F. R. § 160.502. Uses and disclosures of protected health information: general rules.

". . . (g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(3)(i) Implementation specification: unemancipated minors. If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:

(A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;

(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or

(C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with ß 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with ß 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; and

(C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under ß 164.524 to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

. . .

(5) Implementation specification: Abuse, neglect, endangerment situations. Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if:

(i) The covered entity has a reasonable belief that:

(A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

(B) Treating such person as the personal representative could endanger the individual; and

(ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(h) Standard: Confidential communications. A covered health care provider or health plan must comply with the applicable requirements of ß 164.522(b) in communicating protected health information.

. . ."

45 C.F.R. § 164.522 Rights to request privacy protection for protected health information

"(a)(1) Standard: Right of an individual to request restriction of uses and disclosures. (i) A covered entity must permit an individual to request that the covered entity restrict:

(A) Uses or disclosures of protected health information about the individual to carry out treatment, payment, or health care operations; and

(B) Disclosures permitted under § 164.510(b).

(ii) Except as provided in paragraph (a)(1)(vi) of this section, a covered entity is not required to agree to a restriction.

(iii) A covered entity that agrees to a restriction under paragraph (a)(1)(i) of this section may not use or disclose protected health information in violation of such restriction, except that, if the individual who requested the restriction is in need of emergency treatment and the restricted protected health information is needed to provide the emergency treatment, the covered entity may use the restricted protected health information, or may disclose such information to a health care provider, to provide such treatment to the individual.

(iv) If restricted protected health information is disclosed to a health care provider for emergency treatment under paragraph (a)(1)(iii) of this section, the covered entity must request that such health care provider not further use or disclose the information.

(v) A restriction agreed to by a covered entity under paragraph (a) of this section, is not effective under this subpart to prevent uses or disclosures permitted or required under §§ 164.502(a)(2)(ii), 164.510(a) or 164.512.

(vi) A covered entity must agree to the request of an individual to restrict disclosure of protected health information about the individual to a health plan if:

(A) The disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law; and

(B) The protected health information pertains solely to a health care item or service for which the individual, or person other than the health plan on behalf of the individual, has paid the covered entity in full.

(2) Implementation specifications: Terminating a restriction. A covered entity may terminate a restriction, if:

(i) The individual agrees to or requests the termination in writing;

(ii) The individual orally agrees to the termination and the oral agreement is documented; or

(iii) The covered entity informs the individual that it is terminating its agreement to a restriction, except that such termination is:

(A) Not effective for protected health information restricted under paragraph (a)(1)(vi) of this section; and

(B) Only effective with respect to protected health information created or received after it has so informed the individual.

(3) Implementation specification: Documentation. A covered entity must document a restriction in accordance with § 160.530(j) of this subchapter.

(b)(1) Standard: Confidential communications requirements. (i) A covered health care provider must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the covered health care provider by alternative means or at alternative locations.

(ii) A health plan must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the health plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.

(2) Implementation specifications: Conditions on providing confidential communications.

(i) A covered entity may require the individual to make a request for a confidential communication described in paragraph (b)(1) of this section in writing.

(ii) A covered entity may condition the provision of a reasonable accommodation on:

(A) When appropriate, information as to how payment, if any, will be handled; and

(B) Specification of an alternative address or other method of contact.

(iii) A covered health care provider may not require an explanation from the individual as to the basis for the request as a condition of providing communications on a confidential basis.

(iv) A health plan may require that a request contain a statement that disclosure of all or part of the information to which the request pertains could endanger the individual."

Title X Family Planning Services

42 C.F.R. § 59.11 – Confidentiality

"All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals."

Medicaid

42 U.S.C. § 1396a(a)(7)
State Medicaid plans are required to provide "safeguards for confidentiality for information concerning applicants and recipients." [Note: The section contains additional specific requirements and exceptions.]

42 U.S.C. § 1396d(a)(4)(C)
For purposes of the Medicaid program, this title [42 USCS §§ 1396 et seq.]--
"(a) Medical assistance. The term "medical assistance" means payment of part or all of the cost of the following care and services . . .(4) . . . (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of childbearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies[.]"

Drug & Alcohol Programs

42 C.F.R. § 2.14. Minor patients
"(a) State law not requiring parental consent to treatment. If a minor patient acting alone has the legal capacity under the applicable state law to apply for and obtain substance use disorder treatment, any written consent for disclosure authorized under subpart C of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a part 2 program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a state or local law requiring the program to furnish the service irrespective of ability to pay.
(b) State law requiring parental consent to treatment.
(1) Where state law requires consent of a parent, guardian, or other individual for a minor to obtain treatment for a substance use disorder, any written consent for disclosure authorized under subpart C of this part must be given by both the minor and their parent, guardian, or other individual authorized under state law to act in the minor's behalf.
(2) Where state law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other individual authorized under state law to act in the minor's behalf only if:
(i) The minor has given written consent to the disclosure in accordance with subpart C of this part; or
(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the part 2 program director under paragraph (c) of this section.
(c) Minor applicant for services lacks capacity for rational choice. Facts relevant to reducing a substantial threat to the life or physical well-being of the minor applicant or any other individual may be disclosed to the parent, guardian, or other individual authorized under state law to act in the minor's behalf if the part 2 program director judges that:
(1) A minor applicant for services lacks capacity because of extreme youthor mental or physical condition to make a rational decision on whether to consent to a disclosure under subpart C of this part to their parent, guardian, or other individual authorized under state law to act in the minor's behalf; and
(2) The minor applicant's situation poses a substantial threat to the life or physical well-being of the minor applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other individual authorized under state law to act in the minor's behalf."

APPENDIX C: KEY QUESTIONS FOR CONFIDENTIALITY PROTECTION

This appendix contains questions that are important to consider in order to determine whether an individual young person in Vermont can obtain a particular service confidentially. These questions are based on the Vermont and federal laws that establish consent requirements and confidentiality protections for adolescent and young adult health services. Depending on the specific situation additional considerations, and laws not discussed in this guide, may affect whether the young person may receive confidential services.

- Is the youth an adult or a minor?
  - Young adults are generally able to consent for their own care and are entitled to the same confidentiality protections as other adults.
  - Minor adolescents may be able to consent for their own care based their status or the services they are seeking; confidentiality protection may depend on whether they can consent for their own care, the specific service they receive, where they receive the service, and the source of the payment.

- If the young person is a minor, what is their status?
  - Emancipated
  - Married
  - Serving in the military

- What service is the young person seeking?
  - Emergency services
  - Contraception
  - STD services
  - HIV/AIDS services
  - Pregnancy care
  - Mental health services
  - Substance use/abuse services
  - Immunizations

- Where is the service being provided?
  - General medical office, health center, or hospital outpatient clinic
  - Title X family planning health center
  - Substance use disorder treatment program

- What is the source of the payment?
  - Private/commercial health insurance
  - Self-pay
  - Parent payment
  - Medicaid
  - Title X Family Planning Program
  - Vermont state funding
  - Other

APPENDIX D: LEGAL RESOURCES FOR ADOLESCENT & YOUNG ADULT HEALTH & THE LAW IN VERMONT

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APPENDIX E: RESOURCES ON CONFIDENTIALITY, HEALTH INSURANCE, AND ELECTRONIC HEALTH RECORDS

Confidentiality & Insurance

Extensive resources on confidentiality and insurance were developed by the National Family Planning & Reproductive Health Association as part of a three-year research project, Confidential & Covered. These resources are available on the project's website at https://www.confidentialandcovered.com/. The following publications on that website specifically address legal and policy issues related to confidentiality and insurance:

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APPENDIX F: SEXUAL ACTIVITY OF ADOLESCENTS & CHILD ABUSE REPORTING IN VERMONT

Vermont law requires reporting of child abuse[68] based on the following definitions and criteria:

- "Abused or neglected child" is defined as "a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An 'abused or neglected child' also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect."[69]
- "Sexual abuse" is defined as "any act or acts by any person involving sexual molestation or exploitation of a child" and includes numerous sex crimes and various forms of child pornography. Included among the specific acts that represent sexual abuse are: rape, sodomy, lewd and lascivious conduct involving a child,[70] human trafficking, and sexual assault[71]. Sexual assault includes sexual acts between unmarried persons when one person is under the age of 16 (often referred to as statutory rape); however, a sexual act is not considered sexual assault "where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual."[72]
- Mandated reporters include a broad range of health care providers, mental health professionals, social workers, school personnel, and many other individuals who interact with children in the course of their work.[73]
- Any mandated reporter "who reasonably suspects abuse or neglect of a child" is required to make a report to the Department for Children and Families (DCF).[74]
- Legal protections for confidential or privileged information may not be relied upon as grounds for refusal to make a required child abuse report.[75]
- When DCF receives a report that represents an allegation of abuse or neglect it conducts either an assessment or an investigation to determine whether the abuse is substantiated.[76]

The Vermont Department for Children and Families has issued a policy that specifies the criteria for determining when a child abuse report is substantiated.[77] This policy includes specific criteria applicable to cases of sexual abuse. Sexual abuse can be perpetrated by any person, not just by a parent or person responsible for the child. Detailed criteria for substantiation are included for the following types of maltreatment within the category of sexual abuse: child pornography, exploitation, incest, lewd and lascivious conduct, luring, sex trafficking of minors, risk of sexual abuse, sexual assault, and voyeurism. Notably, DCF articulates considerations that are applicable to all forms of sexual abuse:

> **"Any person** may be substantiated for sexually abusing a child. Child maltreatment is substantiated when a reasonable person would believe that the criteria in the table below are met. In addition, the division will consider the following for all forms of sexual abuse:
> a. Was there a significant difference in age, size, or developmental level between the actor and victim?
> b. Was force, threat, or coercion used? Or was the victim unable or lacked the opportunity to consent?
> c. Was the alleged perpetrator a person responsible for the child's welfare, or the child's parent, step-parent, grandparent, or foster parent?
> d. Was the actor at least 18 years of age, residing in the victim's household, and serving in a parental role with respect to the victim?"

A combined reading of the Vermont child abuse reporting statutes, the statutes defining crimes that are considered sexual abuse, and the DCF policies setting forth criteria for substantiating sexual abuse suggests that the concern is greatest when a minor under age 16 is engaged in nonconsensual sexual acts with a person age 19 or older.

APPENDIX G: 25 YEARS OF AYAH CONFIDENTIALITY STUDIES—A BIBLIOGRAPHY

This appendix lists selected articles from the past 25 years that form an important part of the evidence base of research findings supporting confidentiality in adolescent and young adult health care.*

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