To Release or Not to Release: May Non-Custodial Parents Obtain a Copy of Their Child's Medical Records?

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This case study reflects an incident with risk management implications. The details have been changed for confidentiality purposes.

A 10-year-old pediatric patient presented with her father to a pediatrician’s office for an annual physical. Both of the child’s parents shared joint custody of their daughter. During the pediatrician’s examination, the child indicated that she no longer wanted to live with her mother and her mother’s boyfriend. The minor patient stated that she wanted to live permanently with her father, as she felt uncomfortable with some comments that her mother’s boyfriend had made to her.

The physician’s examination quickly turned from a standard examination to questioning the minor regarding the type of comments her mother’s boyfriend had made to her. Upon hearing what the inappropriate comments were, the father became enraged. He said that he was immediately going to contact his attorney to petition the court for full custody of his daughter. The father also instructed the pediatrician to not release a copy of his daughter’s medical records to the mother. He felt she would request a copy of the records once she found out about the discussion that had occurred during the visit. The physician documented the discussion in the patient’s record and also placed a call to child protective services.

It is never pleasant to be in the middle of a dispute between a non-custodial parent who wants a copy of their child’s record and the custodial parent who wants to prevent the release of the medical records to the non-custodial parent. Unless state law specifies otherwise, the following generally apply with regard to who may or may not obtain a copy of a child’s record:

- Divorced parents
  - Non-custodial parents still have parental rights and have access to their child's records, unless state law and/or a court order states differently.
  - Physical custody relates to where the child lives; parents without physical custody still have access to their child’s record.1
- Guardians
  - State laws regarding children who are not in the custody of their parents vary. A foster parent or guardian may have access to the child’s medical records, however, providers must know the applicable state laws and have the appropriate documentation.
- Abusive Parents
  - Providers who suspect child abuse may not be required to grant access to a parent or legal guardian who is suspected of abuse.2 Seek advice from an attorney if abuse is suspected.3
Prior to releasing medical records, the practice should verify the identity of the person requesting the records, as well as that person’s relationship to the patient (e.g., parent, legal guardian). As appropriate, the person requesting the medical records should also provide the pertinent legal documentation (e.g., court order).

Additionally, if granting access or releasing the record may not be in the best interests of the minor child, a provider may deny the request. Practices should always request that parents provide copies of any court-related documents pertaining to custody and retain those documents in the child’s medical records; doing so will help avoid improperly releasing medical records.

Releasing medical records can be challenging. The release of health information is addressed at the federal level by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), specifically in the Privacy Rule, the Security Rule, and the rules and regulations pertaining to breach notifications. All of these rules and regulations are enforced by the Office of Civil Rights. Because health information privacy rules vary by state, it is crucial for healthcare providers to be aware of both federal and state rules and to know which rule prevails when federal and state rules conflict or impose different requirements.

It is imperative for everyone in the practice to know that releasing sensitive information, such as information pertaining to abuse, requires specific authorization. Before releasing sensitive information, providers must ensure that the patient, parent or guardian has provided written consent for the release. The following suggestions may reduce the risks of inappropriately releasing medical records:

- Develop a policy and procedures for releasing medical records, making sure to include guidelines that comply with HIPAA and state law.
- Ensure that staff members are aware of and follow the guidelines regarding the release of medical records.
- Determine how much information to release. (Does the record contain sensitive information?)
- Identify to whom the records may be released (parents, guardians, minors, emancipated minors, minors in the custody of a state or federal law enforcement agency).
- Obtain written authorization.
- Do not ignore a subpoena or court order. Follow organizational policy, check with legal counsel and notify your medical professional liability carrier before responding to subpoenas and court orders.
- Comply with HIPAA guidelines and release records within 30 days.

Granting access to and/or releasing the medical records of a child can be tricky. In order to avoid problems, always be sure to obtain appropriate documentation regarding the person seeking to obtain the records. When in doubt, seek the advice of an attorney.

For further details on reducing the risks associated with releasing medical records, please see Coverys’ Physician Manual Chapter titled, Medical Records: Release.

We hope you found this RisKey helpful. If you have questions or would like further resources on this topic, please contact your Coverys Risk Management Consultant.

References

3. Ibid.
5. Ibid.
8. Ibid.
9. Ibid.

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