Patient privacy is a fundamental patient health care right. Family planning and related reproductive/sexual health care services have specific and unique privacy protections for patients. Health care providers have an obligation to safeguard family planning, reproductive health, and sexual health care (FP/RH/SH) information. These services include pregnancy tests and pregnancy-related care; sexually transmitted disease (STD) screening, diagnostic, or treatment services; contraceptive services; and other reproductive health care routinely accompanying contraceptive services.

Patient Privacy and Confidentiality: Basic Principles

- **Wisconsin minors can legally consent** for their own FP/RH/SH care.

- **Health care providers can provide private and confidential FP/RH/SH care services to minors** who provide consent for their own care, and have an obligation to continue to protect the minor’s privacy rights under penalties of law, including HIPAA.

- **Minors who provide consent for their own care have the same legal expectation of privacy protection, full privacy rights, and HIPAA protections as any adult patient** when receiving FP/RH/SH services.

- A minor’s FP/RH/SH information cannot be released to parents or guardians, including acknowledgement that a minor is a patient, without prior written consent of the minor patient.

- **Parents and guardians are not presumed to have the consent of their minors** for access to or release of a minor’s FP/RH/SH care information, as with other health care information.
  - A patient’s parent or guardian does not have legal access to the minor’s FP/RH/SH care information without signed consent of the minor patient obtained by the health care provider.
  - A health care provider, without such consent, cannot acknowledge (confirm) that a minor patient is (or has) received FP/RH/SH services.

- Minors shall not be reported for abuse by health care providers providing FP/RH/SH care based solely on the fact of sexual activity and age.

- **A health care provider shall not release, deliberately or inadvertently, any information** that reveals (directly or indirectly) the identity of any individual (including a minor patient) who has received FP/RH/SH care services, to any third party without prior written consent of the patient who received the FP/RH/SH services.
Exceptions to the release of FP/RH/SH care related information, otherwise only allowed with prior written consent of the patient receiving services, are limited to circumstances explicitly identified in statute, or a lawful order from a court of record.

Patient Privacy and Confidentiality: Basic Safeguards

- Patient information includes all FP/RH/SH-related information, whether or not in the form of a health care record, including acknowledgment that an individual is a patient. Ensure that patient privacy safeguards extend to all patient information and communications.

- Regularly perform internal privacy audits to ensure privacy safeguards are in place and understood by all staff.

- Presume that all FP/RH/SH care patients want complete privacy and no contact or information to their home address unless informed otherwise by the patient.
  - Routinely verify whether or not a patient receiving FP/RH/SH services wants information sent to their home address.
  - Have safeguards in place to restrict FP/RH/SH information to a patient home address.

- Obtain consultation (legal or administrative), prior to any release of information without consent of the patient who received services, to confirm such disclosure is both legal and mandatory.

- Establish protocols and conduct periodic staff training to prepare in advance for requests for immediate release of FP/RH/SH information without prior consent of a patient.

- Become familiar with federal and state Medicaid rules that have special privacy requirements and billing exceptions involving FP/RH/SH services that differ from other medical services.

- Become familiar with and follow the specific responsibilities under the sexual abuse reporting statutes at s. 48.981 (2m), for health care providers who provide FP/RH/SH care services to minors, NOT to automatically report sexual abuse based solely on the minor’s age and sexual activity so that minors can “obtain confidential health care services”.
  - A sexual abuse report is to be based on specific facts and circumstances defined in law, or an assessment by the health care provider that abuse has occurred.
  - A positive STD test results per se is not sufficient basis to initiate a sexual abuse report involving a minor in the absence of other information suggesting abuse.

- Clearly inform and obtain consent from patients receiving FP/RH/SH services regarding any limitations to privacy protections prior to providing care, i.e., the potential for deliberate or inadvertent release of FP/RH/SH information without their prior consent. Otherwise, patients receiving FP/RH/SH care have a legal expectation of privacy protection.
Patient and community confidence in privacy protections is critical to the effectiveness of FP/RSH/EI care services. Publicly-supported FP/RSH/EI services are required to provide private and confidential services to all patients, and to maintain stringent privacy safeguards to protect all FP/RSH/EI patient care information from release without prior and properly documented written consent.

Endnotes

i All FP/RH/SH patient information and communications, whether or not in the form of a health care record, are protected including automated appointment reminders, automated laboratory test results to a home address, quality assurance surveys, access through electronic medical records, or the potential release of RH/FP/SH information to parents or guardians coincidental with release of other (unprotected) health care information.

ii Medicaid programs have exceptions, which differ from other health care, involving Medicaid FP/RH/SH services, to protect patient privacy. These include the right of minors to receive private and confidential FP/RH/SH care, the exception allowing health care providers to submit claims for off-site laboratory services, the right of patients to obtain FP/RH/SH care services “out of plan”, (i.e., outside the HMO) without prior approval, and the exclusion of FP/RH/SH services from Explanation of Benefits (EOB) mailed to a patient’s home address.