Balancing child rights with parental rights

Question: I am counseling a 15-year-old whose parents are divorced. She does not want either parent to have information about her counseling sessions. She also does not want information going to her school, but her mother is adamant that I release information both to her and to the school. The client is very mature, and I'd like to respect her privacy. Must I give information to the parents or the school if they request it and sign an authorization?

Answer: This is a difficult issue. The answer may depend both on the facts and the specific state law involved. The Health Insurance Portability and Accountability Act (HIPAA) typically defers to state law when it comes to parental rights versus child rights and access to mental health information. That's why state law must be investigated in addition to HIPAA.

First, it's important not to assume that the custodial parent is the only one with rights to access the child's counseling information. According to the law in many states, the noncustodial parent has rights to access a minor's medical and educational records that are equal to the rights of the custodial parent, unless there is a court order to the contrary. One of the main issues to be addressed is whether the particular state laws include access to mental health and counseling records even if the statute uses the term *medical records*. This is a matter of legal interpretation about which you should seek advice from your own local health care attorney.

A second major consideration is whether the state has other laws (for example, mental health confidentiality and privacy statutes) that permit a minor of a specified age to control the right of disclosure or access to information. For instance, in Washington, D.C., when a client is "under the age of 18, but beyond the age of 14, disclosures which require authorization may only be authorized by the joint written authorization of the client and the client's parent or legal guardian." In some states, the parent or guardian controls the right to authorize release of information until the minor reaches the age of majority (usually 18).

Yet another issue to be addressed is whether a custody decree or court order is in place that may prevent a parent from obtaining access to information about the minor's mental health treatment. This would usually apply in the case of a parent who has been convicted of child abuse or neglect.

In a nutshell, the answer to your question depends both on the facts and your state law. Case law sometimes exists that may bring clarity to a statute that is ambiguous. You may wish to consult a local attorney to obtain an opinion of the law in your state, especially because such issues are likely to come up in the future if you counsel children. This action is also consistent with your ethical obligation to balance the ethical rights of minor clients with parental legal rights and responsibilities to protect minor clients (see Standard A.2.d. in the 2014 *ACA Code of Ethics*).

If you are a public school counselor, the Family Educational Rights and Privacy Act (FERPA, also commonly called the Buckley Amendment) may be relevant. Under FERPA, noncustodial parents hold the same rights as custodial parents to educational records unless a court order directs otherwise. Your school system attorney should be consulted to help you determine whether your counseling records are subject to FERPA requirements.

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The question addressed in this column was developed from a deidentified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ❖

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